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THE CASUIST

A Collection of Cases in Moral and Pastoral Theology

Volume IV

New Edition, revised according to the New Canon Law
by REV. STANISLAUS WOYWOD, O.F.M.

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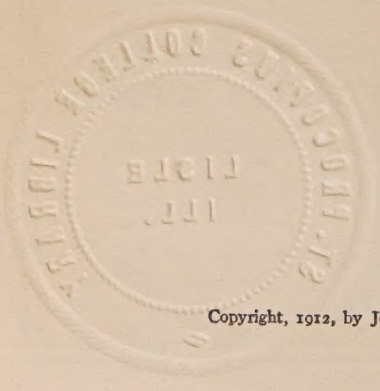

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CORRECTIONS

Made Necessary by the New Code of Canon Law

IN

VOLUME IV

OF

THE CASUIST

Compiled by the VERY REV. STANISLAUS WOYWOD, O.F.M.

CASE VII.—The New Code decides this case in Canon 864 where it is stated that one who received Holy Communion in the morning and should get into danger of death on the same day is to be advised to receive again.

CASE X, page 48.—The mother procuring abortion does not escape the excommunication as the New Code states explicitly in Canon 2350.

CASE XIX, page 85.—The New Code in Canon 93 rules that a person under twenty-one years of age necessarily shares the domicile of the one in whose charge he is, parent or guardian, but he may at the same time also have a quasi-domicile which consists of actual residence in a place with the intention of staying the greater part of the year or having actually stayed over half a year in a place. Canon 92. The domicile of any person of age is lost by leaving said domicile with the intention not to return there any more. Canon 95. If the parties in case XIX were of age and had left the house of their parents with the intention not to take up their residence any more in their parents' house, they have lost the domicile and cannot claim the pastor of their parents as their own. This is clear from the Canons quoted which do not demand a formal renunciation of the domicile.

CASE XLVIII, page 185.—The New Code, in Canon 947, while allowing in case of necessity one anointing on the forehead with the shorter form, demands that the other anointings be supplied right after if the person still lives.

CASE LXI.—The question of supplied jurisdiction *in errore communi* is answered by Canon 209 of the Code which states: "In common error or in a positive and probable doubt both *juris and facti* the Church supplies jurisdiction for the external as well as the internal forum." As the reader will notice, this new law makes it unnecessary to pay attention to the *titulus coloratus* or any other.

CASE LXIII.—Canon 867 states that on Holy Saturday Holy Communion cannot be given except at the Holy Mass or immediately afterwards.

CASE LXXXII, page 321 *ad* 2.—The Code in Canon 874 indirectly denies the right of pastors to delegate jurisdiction for the hearing of the confessions of their parishioners. It may also be noted here that the Code drops the approbation demanded by the Council of Trent and speaks only of jurisdiction for the hearing of confessions.

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THE CASUIST.

I. ON DEPRIVATION OF THE TITLE OF ORDINATION AND THE SUPPORT OF ERRING PRIESTS

The Vicar-General of Gran, by order of the Most Eminent Archbishop of that archdiocese, made the following exposition to the S. Congregation of the Council:

"The priests in the dioceses of Hungary are ordained to the title of their respective dioceses, owing to the fact that the titles enumerated in Canon Law cannot be employed in Hungary. The Most Eminent Archbishop of Gran applied for approbation for this title, but it was not granted, and instead he obtained faculty for dispensing for five years from the legitimate canonical titles so as to enable him to ordain the priests of the Archdiocese of Gran for the title of this archdiocese. The title of the diocese, according to the interpretation prevailing in Hungary, confers on the priests ordained with it the right to a pension or to support from the diocese in case of incapacity for the exercise of pastoral offices. For this object the dioceses of Hungary possess special foundations and institutes. The incardination of priests of another diocese gives the same right as the diocesan title to support from the diocese.

"Now this diocesan title gives rise to a question of great importance with regard to the discipline of the clergy, viz., as to whether priests who have been excommunicated and convicted of atrocious crimes by due process of law can, through the penalty of deposition from the diocesan title, as now used by dispensation in the Arch-

diocese of Gran, be deprived as absolutely as those who have been deprived, as a punishment, of the canonical title of a benefice. For it is to be feared that unhappy priests of this kind, after living a merely civil life and often in distant countries, might, when broken down in health and reduced to misery, allege the diocesan title to claim support from the archdiocese, if they cannot be entirely deprived of the diocesan title. And this would assuredly be no small incentive to bad priests to plunge into a dissolute life."

The ordinary, therefore, concludes by begging the S. Congregation "to be kind enough to solve this question, and enlighten me with regard to the application of the penalty of deprivation of the title."

Synopsis of the Question.—Total deposition (for there is also partial deposition), also known as simple and absolute, which is under discussion here, perpetually deprives the cleric, upon whom it is inflicted as a punishment, of his order (though not, of course, of the *character*) and of all ecclesiastical offices and benefices (Schmalz, V, tit. XXXVII, no. 135; Reiff. V, eod. t., no. 33; Bened. XIV, *de Syn.*, l. IX, c. VI, no. 3). From this general deprivation of offices and benefices is not excluded the benefice which a deposed cleric has acquired by the title of his ordination. For the law makes no such exception and "where law does not distinguish neither must we distinguish" (*l.* 9 *in fin. de juris et fact. ignor.; c.* 6, and *pen. de majorit.*). This is all the more evident from the fact that deprivation of such a benefice can be inflicted for crimes less grave than those for which total deposition is inflicted. On this point, see Monacelli, tit. XIII, form. 3, no. 22: "Clerics ordained to the title of a benefice, if they commit crime, or do not observe the law of residence, or otherwise act wrongly, may *servatis servandis*, be deprived of their benefices, notwithstanding that they have been or-

dained to the title of these benefices, or that this title has been used instead of that of patrimony, as has frequently been declared by the S. Congregation of the Council, and especially in *Firmana* of May 18, 1665 (lib. 24 decret., page 496); *Romana* of March 18, 1684 (lib. 34 decret., page 70), and *Vercell.* (of Dec. 15, 1690). And with Monacelli agree Lucidi, *de Visit.*, c. III, Sec. 12 and Wernz, *Jus Decret.*, tom. II, p. 136.

Now as the title of the diocese, which is used in Hungary by indult of the Holy See, takes the place of the title of benefice which, according to Trent sess. 21, Ch. 2, *de reform.*, is a true and principal title of ordination, and as said title is purely ecclesiastical, I have no doubt but that the title of diocese is, like the title of benefice, lost by the punishment of deposition.

But it is an established principle of law that deposition does not deprive of the privileges *fori et canonis*, and that the deposed cleric remains in the clerical state. "Hence," as Layman says, lib. I, trac. V, p. III, c. V, no. 2, "the Church is bound to support a deposed cleric and one suspended from his benefice [Layman is speaking here of a cleric suspended *ad modum poenae vindicativae* and not *ad modum censurae*] lest to the shame of the clergy he be compelled to beg." The same teaching is given by Abb., c. *pastoralis, Sec. verum,* no. 16, *de appellat.,* Avila, p. 4, dub. I, conclus. 3, and Suarez, who also explains how it is that, as concerns the right to support, the position of a deposed cleric is better than that of a cleric suspended *per censurem* from his benefice: "The doctors," he says, "make this distinction, between the cleric absolutely deposed or suspended from his benefice on account of crime, and the one who is under censure on account of contumacy, that the former must in case of indigence be supported from the fruits of the benefice (*erg. ex c. Studeant, distinct.* 50) lest he be compelled to beg, since

it is not in his power to hold a benefice or the right to ecclesiastical revenues; while in the case of one thus punished on account of present contumacy the Church is not bound to support him out of its property, even if he be in indigence and compelled to beg, for he deserves all this by reason of his contumacy, and the disgrace resulting from it falls on his own person rather than on the clergy; and all this is permitted for the greater good of the Church, viz., the correction of contumacy" (Suarez, *de cens.*, disp. 13, sect. 2, n. 14).

Hence, in the present case the deposed cleric on the one hand is deprived of the title of diocese with which he was promoted to orders, but on the other hand the diocese is bound to support him, if he is in indigence, lest he inflict disgrace on his state by being compelled to beg; just as a cleric ordained to the title of a benefice who, by incurring the penalty of deposition, loses his benefice, but who, for the reason already given, must be supplied with the necessities of life from the revenues of the benefice or otherwise from the property of the Church.

It might be objected that it is useless to deprive a deposed cleric of the title of diocese, with its right to support, if the diocese is afterward obliged to support him by reason of the clerical state which he still retains. For thus the same thing is both taken away and given to him.

But this is not correct. For the maintenance due to a cleric from the title of ordination (in the present case from the title of diocese) is more considerable, both by reason of the specific obligation and of the dignity and quantity, than the support given to a cleric, deposed for crime and reduced to misery, as a kind of alms, on the ground that he has not yet been expelled from the clergy.

But what if a cleric, unchastened by his deposition, continues in

the slough of offense? Is he to be perpetually supported from the property of the Church?

The canons in this case decree that a deposed cleric "if he has been incorrigible is to be excommunicated; then, his contumacy increasing, he is to be anathematized, and if after this he is still in contempt and reaches the extreme stage of evil, as the Church can do nothing more with him, he is to be punished by the secular arm" (*C.* 10 *De Judiciis*); in other words, if the deposition has proved of no avail, the process of actual degradation can be resorted to, which, among other effects, imports that the cleric is deprived of the privilege *fori et canonis,* ejected from the clerical state, and deprived of all ecclesiastical provision (Schmalz., V, XXXVI, n. 139; Reiff. eod. lib. et tit., n. 32; S. Alphon. VII, c. III, n. 324, and other Doctors passim), including certainly support in case of destitution.

But as it is not always expedient, especially in our times, to degrade a deposed cleric, in these cases there is nothing to hinder a bishop from depriving such a cleric of all ecclesiastical subsidy by the passing of a second sentence, even in contumacy, as is taught by Layman, and Abbate in the passages cited, and by Suarez in disp. 27, n. 5; the same thing is evident from the rules of law: "The greater always contains the less," and "there is no doubt but that the part is contained in the whole" (*De reg. jur.* in 6 reg. 35, 80).

For since a bishop can deprive a cleric cumulatively of a number of things by degradation, why cannot he deprive him of a part of them only when there is a sufficient cause?

Besides, if the deposed cleric is also excommunicated (as seems to be the case with the priests concerned in the present question) he loses *ipso facto* all ecclesiastical aids by reason of the censure, as long as he perseveres in his contumacy, according to the opinion of

Suarez, with others (see S. Alph., lib. III, n. 670), based on the argument from *c. Pastoralis,* and *verum, de Appellat.,* which says: "Ecclesiastical revenues are justly withdrawn from him to whom the communion of the Church is denied," or such a one may justly be deprived of them by judicial sentence, according to the more common opinion (Schmalz., V, 39, 158; D'Annibale, I, and 365, n. 33).

After this, that the proposed question may be rightly solved, it is asked: Whether priests, who have been excommunicated and found guilty of atrocious crimes by due process of law, can, by the penalty of deposition from the title of diocese, as this is at present used by apostolic dispensation in the Archdiocese of Gran, be as absolutely deprived as those who are deprived by the penalty of deposition from the canonical title of benefice?

The Most Eminent Fathers of the Congregation of the Council, in the general meeting held on June 11, 1910, decided to answer the proposed question: *In the affirmative, saving, however, the dispositions of the law with regard to support for those who are really indigent.*

Our Most Holy Father Pope Pius X. in an audience granted on the 12th of the same month of June to the undersigned secretary, was pleased to approve and confirm the sentence of the Most Eminent Fathers.

C. Card. Gennari, Prefect.
Basilius Pompili, Secretary.

II. FASTING BEFORE HOLY COMMUNION

Is is lawful for a person to receive holy Communion when there exists a well-founded doubt as to whether the person has broken the fast required for holy Communion?

Answer.—Theologians are not agreed as to whether it is lawful or not. Rigorists maintain that under no circumstances is it lawful to receive holy Communion, unless one is *sure* that the fast has not been broken since midnight preceding the holy Communion. This is according to their general principle: *In dubio, quod tutius est, tenendum.* This principle, of course, is denied by all those who adopt probabilism as a system of morals or a norm of moral conduct. But the probabilists themselves do not agree as to whether it is lawful to receive holy Communion when one is in doubt as to whether the fast has been broken. For the sake of clearness, it is necessary to premise that the doubt concerning the fast may arise either from the fact that one has partaken of food or drink, but is in doubt as to whether it was *before* or *after* midnight, or one may be *sure* that one was fasting at midnight, but doubts whether he broke the fast after midnight. The principle on which the probabilists solve the case is: *Melior est conditio possidentis.* But they do not agree in the application of the principle. Some maintain that when doubt exists about the fast required for holy Communion, then the law forbidding holy Communion to the non-fasting is in possession and makes the Communion under the circumstances unlawful. Others, on the contrary, maintain that when one is in doubt as to whether one is fasting or not, such an one

is in possession as against the law, because the law is doubtful, that is to say, it is doubtful whether the law applies to this particular case, making the Communion illicit. Owing to this different application of the principle *melior est conditio possedentis,* we have three different opinions of the theologians belonging to the probabilistic school about this matter.

The *first* opinion holds that in either case it is lawful to receive holy Communion. That is to say, whether you are sure of the *fact* that you partook of food or drink, and doubt only concerning the time, namely, whether it was *before* or *after* midnight that you partook of the same, or whether you are sure that you were fasting at midnight and are in doubt whether you ate anything after that time or not, in either case you may *tuta conscientia* approach the holy table. Sporer, among others, holds this opinion, *de sacrif. Missae, VI.,* 474, and justifies it in this manner: "The right that I have to receive holy Communion cannot be rendered uncertain by an uncertain or doubtful fact; but the fact that I broke my fast is doubtful. To prove the major, it is only necessary to recall that in law facts are not presumed, but must be proven. The precept to receive holy Communion *fasting* is a prohibition. The prohibition must be established by fact, that is, unless you can prove beyond reasonable doubt that you have broken your fast after midnight, there exists no prohibition against your receiving holy Communion. St. Alphonsus thinks well of this manner of reasoning (*de conscien.* 38).

The *second* opinion holds that it is unlawful to receive holy Communion, unless one is *sure* that one is fasting. No one must receive holy Communion, unless he knows himself to be worthy. Now if one does not know for certain whether he is fasting or not, he does not know whether he is worthy or not. Therefore let him prove

himself worthy or else abstain. *"Probet autem seipsum homo, et sic de pane illo edat"* (I. Cor. xi, 28).

This opinion maintains that we have no absolute right to receive holy Communion, but only a conditional right, conditional, namely, on our worthiness, and until we satisfy the condition and prove our worthiness, we have no right to holy Communion. As no one has the right to receive Holy Orders unless he can prove the justice of his claims to them, by proving his age and legitimate birth, so no one has a right to receive holy Communion, unless he can prove, among other things, that he is fasting. And as no injury is done to him who is refused Holy Orders, because he cannot prove his age or legitimate birth, so no injury is done to one who is refused holy Communion because he cannot prove, beyond doubt, that he is fasting. Thus the Salmanticenses, Sanchez, Bonacina, etc.

The *third* opinion makes a distinction between the two cases of doubt and holds that in case you are sure that you were fasting at midnight, and only doubt whether afterwards you broke your fast, you may receive holy Communion; whereas if you are sure you ate or drank something around midnight, but are not sure whether it was *before* or *after* midnight, in that case it is not lawful to receive holy Communion. De Lugo makes this distinction, *de Euch. disp.* 15, *sect.* 5. In the first case, says Lugo, it is lawful to receive holy Communion, whenever you are sure that you were fasting at midnight, and only doubt whether afterwards you may have broken your fast, because every one has a right to receive holy Communion, unless he knows that he is prohibited. In this case the man is certain that he was fasting at midnight, therefore that at midnight he was worthy to receive, and it cannot be required of him now, *v. g.,* in the morning, to prove that he is still worthy, because at midnight he was in possession of the right to receive

holy Communion and it is unjust to dispossess him of that right in the morning, because he can no longer prove an undisputed title. Once lawfully and certainly in possession of a right or privilege, one remains in possession of the same until one's title to the right or privilege can be proven invalid beyond reasonable doubt. If such an one were refused holy Communion, it would be nothing else than ousting him from his rights or possessions on account of an unproven fact. This would be against all law, because in law facts are not presumed, but must be proven. In the second case, however, namely, where a person is sure that he ate or drank something around midnight, but is not able to determine whether it was before or after midnight, in this case, Lugo holds that it is not permitted to receive holy Communion, because since he knows that he ate something he is not in possession of the right to receive, as the man is in the other case, but rather is under the necessity of proving himself worthy to receive, which he is not able to do, as long as he is in doubt whether it was before or after midnight that he broke his fast. He must prove himself worthy, like one who wishes to receive Holy Orders, or, to be promoted to an ecclesiastical benefice. If he cannot prove himself worthy, you do him no injury by refusing to promote him.

In conclusion, it must be said that at present theologians discard all distinctions and maintain that in any case of doubt about the fast one may receive holy Communion.

St. Alphonsus says: *"Lex prohibens communionem non videtur certa, et tamquam dubia non obligat." de consc.* 38. Again: *"Utrum autem in dubio negativo, an transacta vel ne sit media nox, possit aliquis communicare? Valde probabilis est, imo forte probabilior sententia affirmans, quia cum hoc praeceptum sit negativum, de non accendendo ad Eucharistiam post comestionem, non teneris ab illo*

abstinere, quamdiu non es certus, et eo magis si nullam habeas rationem probabilem te comedisse; tunc enim adhuc manes in possessione tuae libertatis." De Euch. lib. VI, tr. 5.

Ita Gasparri, *de sanct. Euch. cap. IV,* 447; Bucceroni, *de Euch. tr. IV,* 587; Noldin, *de Euch.* 150; Tanquerey, *de Euch.* 143.

III. POWER OF THE STATE TO MAKE DIRIMENT IMPEDIMENTS

A man named John, married a woman named Dora. Both were unbaptized at the time of their marriage. Besides, they were first cousins, and their marriage was against the law of the State where it took place. The laws of that State declare the marriages of first cousins null and void. In the course of time John and Dora separated and John took up with a Catholic woman whom he promised to marry as soon as he procured a divorce from Dora. The divorce has since been granted and the Catholic woman now desires to be married to John by a Catholic priest. Would it be lawful for a priest to marry them?

Answer.—The first question which this case raises, is: Were John and Dora validly married before God, although the State declared their marriage null and void, *ab initio,* because they were first cousins? In other words, have the civil authorities power to make diriment impediments which will nullify, *in foro conscientiae,* marriages of the unbaptized? This is the first question that must be decided, before there can be any question of John marrying anybody, until Dora dies.

The Catholic Church teaches that the State has no jurisdiction over the marriage of the baptized, *quoad vinculum conjugale.* The marriage contract of the baptized is a Sacrament, and as such has been committed by Christ to the care of His Church. Only the Church can legislate validly concerning the marriage bond of baptized persons.

The State may make laws affecting the civil effects of marriage in the case of baptized persons. The State can create civil disabilities to be incurred by baptized persons for the non-observance of certain legal formalities in contracting marriage. But the State has no power whatsoever over the marriage bond, *conjugale vinculum,* of baptized persons. Only the Church can make laws that affect the marriage bond, or *vinculum,* of the baptized. This has always been the teaching of the Catholic Church.

But now the question arises, by what laws are the marriages of the unbaptized to be governed? For it is just as important that the marriages of the unbaptized should be governed by law, as it is that the marriages of the baptized should be so governed. Now the Church has no jurisdiction over the unbaptized. *"Quid enim mihi de iis qui foris sunt, judicare,"* says St. Paul (I. Cor. v, 12). Of course the marriages of unbaptized, as well as the marriages of the baptized, are subject to the divine and the natural laws. But if the divine and the natural laws are not adequate for the regulating and controlling of marriage among baptized persons, how can they suffice for regulating and controlling the marriages of the unbaptized. The Church, herself, acknowledges the insufficiency of the divine and natural law in the matter of marriage between baptized persons, by creating many diriment impediments over and above those arising from the divine and natural law. And in so doing the Church acts wisely and for the best interests of human society. It is of the highest importance to society, for instance, that certain marriages should be declared not only unlawful, but also null and void from their inception. Such are, for instance, marriages without any legal or public formalities, marriages between very near blood relations, marriages between children, marriages procured through grave threats and fear. Such mar-

riages, as a rule, are very harmful to society and are rightly prohibited under pain of being null and void. The impediments placed in the way of such marriages are not found either in the divine or natural law. They are the creation of the Church, for the protection of society. And it must be admitted that the Church in making them consulted the gravest interests of human society, because they are absolutely necessary for its welfare.

But now, we ask, is it not equally necessary that the marriages of the unbaptized should be controlled in the same manner for the same good ends? Is it not equally harmful to society for near blood relations to intermarry, whether they be baptized or unbaptized? Is it not equally harmful to society for children to marry or for public formalities to be omitted, whether the parties be baptized or unbaptized? And more especially in our own time, when the number of the unbaptized is increasing every day. But what authority can control the marriages of the unbaptized? Certainly not the Catholic Church. She has always disclaimed any jurisdiction over the unbaptized. If, therefore, the civil State has no jurisdiction, *quoad vinculum conjugale,* over the marriages of the unbaptized, there is no authority on earth that has jurisdiction over them. But to admit this would be equivalent to admitting that almighty God had not made sufficient provision for the good and adequate government of society. As this cannot be admitted, we are forced to the conclusion that the civil authorities have received from almighty God ample jurisdiction to regulate and control the marriages of the unbaptized, *quoad vinculum,* just as the Catholic Church has received adequate jurisdiction in the case of the baptized. The exercise of this power by the State must not be in contravention of the divine or natural law, nor against the dictates of reason.

This is one of the reasons why a great many modern theologians and canonists concede to the State the power to make diriment impediments nullifying, *in foro conscientiae,* the marriages of the unbaptized; the necessity on the one hand, of controlling and regulating the marriages of the unbaptized for the protection of society, by more ample legislation than is contained in the divine and natural law, and the absence, on the other hand, of any authority competent to make such legislation, unless it be conceded that the civil State be such competent authority.

Among the theologians who take this view of the matter are St. Thomas, Lessius, Schmalzgruber, Gasparri, D'Annibale, Cavagnis, Ballerini, Konings, Lehmkuhl and a host of others. Thus, for instance, Cardinal Gasparri considers this opinion not only very probable, but even certain: *"Quam sententiam probabiliorem, imo certam habemus, praesertim auctoritate sacrarum congregationum Romanarum"* (de Mat i, 282).

The constant and uniform practice of the Congregation of the Council, as well as of the Propaganda Fide, in deciding marriage cases among the peoples of the Far East, has always proceeded on the assumption that the State possesses legitimate authority to make diriment impediments in the case of marriage of its unbaptized citizens. In 1854 the following *dubium* was proposed to the Congregation of the Council by the Vicar Apostolic of Yun-nan in China: It often happens in these parts, says the Vicar, that a younger brother marries the widow of his older brother, deceased, and afterwards becomes a Catholic. It is very difficult to separate them, both on account of the children born to them and the danger of turning them away from the faith. Yet such marriages seem to be invalid, because they are forbidden under severe penalties by the civil law, even under pain of death. Now, after their bap-

tism, will it not suffice, for the revalidation of such marriages, that the parties to them renew their consent?

To this the Congregation of the Council answered, September 20, 1854, as follows:

"Praevia dispensatione disparitatis cultus, et primi affinitatis gradus per facultates, quibus missionarii gaudent, consensum esse renovandum."

This answer supposes that the civil impediment, forbidding such marriages, did, in fact, render the marriage, from its inception, null and void.

The Propaganda, in 1631, sent instructions to the missionaries in the Far East concerning polygamist converts. Any polygamist who, with all his wives, shall be converted and baptized, must put away all his wives except the first one, *quae sola est vera uxor, si in illius matrimonio nullum intervenit impedimentum juris naturalis vel positivi conditi ab eorum principe."*

It may be said, therefore, that it is practically certain, as Cardinal Gasparri maintains, that the State does enjoy the power to make diriment impediments, nullifying in conscience the marriage of the unbaptized, provided such impediments are not against the divine or natural laws and are reasonable for the promotion of the public welfare.

The second question raised by this case is: Did the Catholic woman incur the *impedimentum criminis* by agreeing to cohabit with John, under a promise of marriage, when she knew that John had a wife living? She did not. In the first place, it is practically certain that John did not have a wife living, since his marriage to Dora was rendered invalid by the civil law. But suppose that John's marriage to Dora is doubtful. Even in that case it is doubtful whether one incurs the *impedimentum criminis* if

one is ignorant of its existence. This impediment differs from all other ecclesiastical impediments in that ignorance probably excuses from it, while ignorance does not save one from incurring the others. It is very probable that the Church intends this particular impediment in the nature of a punishment, *poenae vindicativae extraordinariae.* Ignorance, however, always saves one from incurring extraordinary penalties. This is the view of a great many theologians and canonists.

A dispensation, however, *super impedimento criminis adulterii,* might be procured, *ad cautelam;* and, of course, a dispensation from the diriment impediment *disparitatis cultus.*

IV. RESTITUTION TO A FOUNDLING ASYLUM

A rich man named Cyrus, in order to protect his good name, has his illegitimate child conveyed secretly to a foundling asylum conducted by the city. He has no idea of reimbursing the asylum for the expense it incurs by caring for his child. Of course he has plenty of means to do so, if he wished, nor need he run any risk of having his shame discovered. However, he has no intention of doing so. Now he goes to confession, and in the course of his confession this fact becomes apparent to the confessor. The confessor, knowing Cyrus' ability to reimburse the foundling asylum, and that in doing so he would run no risk of being discovered, obliges him to make good the asylum's expenses for the care and education of his child. This Cyrus refuses to do, whereupon the confessor refuses him absolution. Was the confessor right?

Answer.—Strictly speaking, the confessor was not right. He imposed an obligation on Cyrus when it is seriously disputed by the gravest theologians whether any such obligation really exists. Every confessor knows, or ought to know, that it is not lawful to impose an obligation, *de cujus certitudine non constat.* We are perfectly aware that some of the greatest theologians would hold Cyrus to restitution. Foundling asylums, they maintain, are founded for the benefit and protection of the foundlings, and not for the advantage or profit of the foundlings' parents. If the parents are able to pay, they are bound in conscience to pay. This is the opinion of de Lugo, Billuart, Carrière, and many others . But there are many other theologians who hold the contrary opinion and maintain that

Cyrus, in this case, is not bound to make any restitution. And the opinion of these latter appears to St. Alfonsus to be the more probable of the two. They even hold that, though the foundling asylum should be poorly endowed or in straitened circumstances, nevertheless restitution cannot be strictly enjoined in a case like the one here submitted. The reason is because these institutions have been founded not only for the relief of the poor, but also for the protection of the rich, in circumstances where their good name might else be put in jeopardy, or where they might be induced to commit abortion, or to destroy their illegitimate offspring. These institutions have been founded and are maintained principally to discourage abortion and child murder, by rendering these quite unnecessary for the protection of the good name of the parents of illegitimate children. As the rich and influential are more exposed to the danger of defamation and loss of reputation by reason of illegitimate offspring, and therefore more exposed to the temptation of destroying their illegitimate children, in order to save their good name and their position in the community, therefore are foundling asylums instituted and maintained for the relief and protection of the rich even more than for the poor.

St. Alfonsus says: "*Hujusmodi hospitalia non solum sunt instituta ad subveniendum pauperibus, sed etiam divitibus in infamiae periculo, in quo ipsi solent vel procurare abortum, vel prolem necare, ne infamentur; et huic malo intendunt hospitalia occurrere: imo dico ista potius, quam pro pauperibus, erecta esse pro pueris spuriis, ad eos liberandos a discrimine mortis aeternae et temporalis, quam facile subirent ob infamiae timorem, si adulteri ex proprio eos alere deberent*" (Lib. 4, n. 656).

Moreover, since the municipality, in the case before us, supports the foundling asylum, its benefits must be free to all the citizens

alike, whether rich or poor, without discrimination, since the asylum is supported from the public taxes. And the same may be said of all private asylums that receive city aid, since such aid is rendered from the public treasury. Even in the case of strictly private asylums, which receive no State aid, but are maintained by voluntary private subscriptions, the first and primary purpose of such institutions is to save the children from temporal as well as eternal death, by protecting the good name of their parents, and therefore their benefits are meant for the rich as well as for the poor. We do not mean that other private hospitals and institutions are intended for the rich in the same way that they are for the poor. Their purpose being different, the rich are bound to restitution towards them if they make use of them free gratis. But with foundling asylums the case is different, owing to the purposes of their institution.

Some theologians, however, as Noldin, S. J. Marres, etc., maintain that if the rich make use of *private* foundling asylums, or if the city cares for foundlings in private houses or in institutions intended for the poor, they ought to make restitution to such institutions.

"Ubi vero infantes expositi cura communitatis civilis, sive in domibus privatis sive in hospitali ex tributis vel ex bonis pauperibus destinatis aluntur, parentes divites expensas compensare tenentur" (Noldin II, 289, b.).

In the case of Cyrus, therefore, since it was only probable, and by no means certain, that he was bound to restitution for the support of his illegitimate offspring, the confessor exceeded the bounds of justice in refusing him absolution because he refused to make restitution. The confessor has no right to impose obligations on penitents when it is not sure that such obligations really exist. The confessor might have exhorted Cyrus to reimburse the asylum, or he

might have imposed it as a penance, but he was not justified in imposing restitution as a strict obligation. All the more, since such a course on the part of the confessor is directly adapted to turn Cyrus away from the Sacraments.

V. SCANDAL BY IMMODESTY IN DRESS

Claudia, a woman of considerable physical charm, admits in her confession that she is not over-modest in her dress. She is not, of course, positively indecent, or grossly immodest, but at the same time she admits that she would hardly pose for a model of Christian modesty in the matter of dress. She maintains that her intentions are pure, even though vain, and that if others think evil on her account, they do so because they are evil-minded, and that it is no concern of hers. She does not propose to dress like a nun, just because some people happen to be disposed to think evil. The evil that they think must be ascribed to their own impure minds, and not to her way of dressing. Though all the while she admits that her manner of dress is not as modest as it might be, nor in keeping with the general tone of dress adopted by the women of her own condition in life. The confessor knows that she has been the occasion of grave sins of thought and desire to certain young men of the parish. But he fears to insist too much, lest Claudia give up going to the Sacraments altogether. In this difficulty he desires to know:

First: How far is Claudia to be held responsible for the scandal that her way of dressing seems to occasion?

Second: What advice ought the confessor give Claudia?

Answer.—In its original sense the word *scandal* means a trap, or a snare, laid for an enemy. In the Greek version of the Sacred Scriptures, the word is used in a metaphorical sense, to signify a stumbling-block, an offense, scandal, etc., because one who is the occasion of the sins of others, is like a man who puts a stumbling-block in their way and becomes "a stone of stumbling, or a rock of offense" (Is. viii, 14). In this latter sense the word *scandal* is used

by the theologians and canonists. The definition of scandal, generally accepted in theology, is the one given by St. Thomas, II. ii, q. 43, Art. 1: *"Opus minus rectum, praebens proximo occasionem spiritualis ruinae."* Any conversation or any conduct which is, or at least appears to those present to be sinful, and which is calculated, therefore, to lead others into sin, is scandalous.

The speech, or the actions, or conduct which give scandal, must either be sinful in fact, or else have the appearance of being sinful. If there be no sin in our speech or our conduct, and no appearance of sin, then such speech or conduct can not possibly be the occasion of another's sin. If our speech and our conduct are lawful and innocent, and have no appearance of evil, and still another takes occasion from them to commit sin, his sin can in no wise be imputed to us, but wholly to his own evil disposition, moral weakness and malice. To be guilty of scandal, one's speech or conduct must be in reality sinful, or at least have the appearance, as far as others are concerned, of being sinful. Thus, if I eat meat on Friday without a sufficient reason, I commit sin; and if another is led by my example to do likewise, my action becomes the occasion of my neighbor's sin, and therefore scandalous. But if I have a sufficient reason, or even a dispensation, to eat meat on Friday, but my neighbor is not aware of it, and takes occasion by my example to transgress the law of abstinence himself; although my eating meat on Friday is not a sin, since I have a sufficient reason or enjoy a dispensation to do so, nevertheless my conduct may *seem* to my neighbor to be sinful, since he is ignorant of my reasons justifying my action, and I become guilty of scandal, since by my conduct, which *appears* to my neighbor to be more or less sinful and reprehensible, I lead my neighbor into sin.

There is a popular use of the word *scandal,* which must not be confounded with its technical meaning. In ordinary parlance, the

verb, *to scandalize,* is often used in the sense to shock, or astonish, or to cause wonder or amazement. Thus we say that such conduct is scandalous, meaning thereby that it is shocking or that it outrages our moral sense. But, strictly speaking, no conversation and no conduct is scandalous, even though it be very shocking, unless it be calculated to lead those who hear it or see it into sin. The action that scandalizes need not necessarily be sinful; it may be indifferent, or it may even be good; but if good or indifferent, it must, at least, owing to the circumstances, be connected with the spiritual damage done to our neighbor, and therefore such action, on account of this relationship, is called by St. Thomas and the theologians *minus recta.* Indeed, as a rule, no shock accompanies scandal. The person scandalized, instead of being shocked or astonished by, or amazed at, the conduct that scandalizes him, is pleased by it, as justifying his own sin. It palliates his own transgression, in his own view of it, and lessens his guilt, if it does not wholly excuse it.

The speech or the conduct that gives scandal is not the *cause* of another's sin, but only the *occasion* of it, the accidental or incidental cause that provokes it, but not its efficient cause or its sufficient reason. The real *cause* of the sin that follows on scandal is the free will of the person taking scandal. Such a person, seeing the evil, or seemingly evil, conduct of another, is provoked or incited by it to make up his mind to commit sin. The sin that follows must be ascribed entirely to his own free will as to its efficient cause. The speech or conduct that incited him to sin was not the *cause,* but only the provocation, or incitement, or occasion, of the sin.

One may give scandal without another person taking scandal. It is not of the essence of scandal that it should actually lead another into sin. All that is required in order that any speech or conduct be scandalous, is that, of their nature, they should be calculated to incite

another to sin. If, under ordinary circumstances, the person guilty of evil speech or evil conduct must naturally apprehend that another person will be incited or provoked by them to commit sin, then such speech or conduct is scandalous, even though the person hearing or seeing the same is not, as a matter of fact, incited by them to commit sin. On the contrary, if I know that those who are listening to my conversation or who see my evil actions will not be incited by them to commit sin, because they are too firmly founded in Christian virtue to be influenced by my bad example, then I do not give scandal.

If, while I perform an action that is sinful, or at least seems to others to be sinful, I intend to incite or provoke another to commit sin, I am guilty of *direct* scandal. Generally speaking, the one who gives *direct* scandal does so for his own advantage or pleasure. He derives or hopes to derive some benefit from the sin into which he leads his neighbor. Therefore he *directly* intends the sin of his neighbor, hoping to derive from it some advantage. He sins himself, in order to incite his neighbor to sin, hoping to profit by his neighbor's sin. If, on the contrary, I do not intend or desire to incite my neighbor to sin, but at the same time I foresee that, if I commit such or such a sin in the presence of my neighbor, my neighbor will be incited by my conduct to commit sin himself, and nevertheless I commit the sin, then in that case I give *indirect* scandal. One who gives *indirect* scandal does not wish, or desire, or intend to lead his neighbor into sin, but nevertheless he foresees and apprehends that his neighbor will be provoked to commit some particular sin, if he himself speaks or acts sinfully in the presence of his neighbor, and yet he proceeds to speak or act in a sinful manner, or in what at least appears to his neighbor to be a sinful manner.

One may commit a mortal sin or only a venial sin in giving scandal. It all depends on the gravity of the sin that one foresees one's

neighbor will commit. The action that I perform may be only venially sinful, and yet I may by it commit a mortal sin of scandal, because I either intend to incite my neighbor to commit a mortal sin, or at least I foresee that he will be incited by my conduct to commit a mortal sin. On the other hand, I may sin mortally myself and still only give venial or slight scandal, where I foresee that my action, although mortally sinful, will lead another only into venial sin. Consequently the gravity of the scandal one gives does not depend on the gravity of the sin one commits, but on the gravity of the sin that one foresees one's neighbor will be incited to commit. Thus a priest may give grave scandal by some act that is only venially sinful, whereas a layman, by the same act, would only give slight scandal or no scandal at all.

Whoever gives *direct* scandal, that is, whoever intends, by his own action, to lead or incite another to sin, is guilty of sin not only against the love we owe our neighbor, but also against the particular virtue or commandment against which he incites his neighbor to sin. Thus if I, by my sinful conduct, hope to provoke my neighbor to steal, I am guilty of a sin not only against charity, but also against justice. In case I do not intend the sin of my neighbor, but only foresee it and permit it, I am guilty of *indirect* scandal, which is a sin only against charity. For every virtue lays an obligation on us, not only that we ourselves do not violate it, but also that we do not desire that it shall be violated by others.

Bearing these few preliminary remarks in mind, it will easy to form a just judgment of Claudia's conduct.

1. In the first place Claudia is guilty of *indirect* scandal. It is not Claudia's purpose, by her manner of dress, to lead others into sin. If such were her purpose she would be guilty of *scandalum directum.* But as her purpose is only the indulgence of her own

vanity and self-complacency, she becomes guilty of *indirect* scandal, inasmuch as her conduct is not altogether right, and is calculated to induce or incite others to sin. Indirect scandal, as has been said above, is a sin against charity, but not against the particular virtue against which our neighbor is led to sin. In the present instance, therefore, Claudia sins, at least materially, against charity, but not against purity; that is, her conduct, in as far as it is scandalous, is only against charity.

But what kind of a sin does Claudia commit, mortal or venial? We are inclined to think that she commits a venial sin. Immodesty in dress, at least off the stage or outside of masked balls, will hardly ever amount to more than a venial sin. The custom of the country must be considered. Physical charm is more alluring than dress, and yet no one is obliged to destroy their beauty because others take scandal at it. Of course a pious woman would not be guilty even of a slight immodesty in her dress, if she thought it might lead others into even venial sin. But Claudia evidently is not pious, nor much concerned about her neighbor's spiritual welfare. If some persons unknown to her take grave scandal by her conduct, such scandal is rather *scandalum sumptum et non datum.* On the contrary, if it is not a question of some indetermined persons taking scandal, but of a particular and known person, then the obligation to avoid giving scandal becomes more urgent.

2. Claudia ought to be advised and exhorted to be more modest and careful in her dress, but she could scarcely be obliged, under pain of mortal sin, to change her style of dress, since it is rather her personal beauty than her dress that is the cause of the scandal. Especially since there is danger that Claudia might give up the frequentation of the Sacraments, it would be prudent not to urge a reformation in dress too vehemently.

VI. LAW OF ABSTINENCE FOR U. S. SOLDIERS

Dubium. United States soldiers are dispensed from the law of abstinence, except on six days of the year. (1) Does this apply to officers who live in their own houses and do not have to depend on the common mess, though living on the military reservation?

(2) Does this dispensation apply to enlisted men, who live on territory adjacent to the reservation, or even on the reservation, but, receiving a commutation of rations, can and do supply their own tables as any civilian?

(3) Do soldiers of the U. S. Army still have to observe abstinence on Holy Thursday, one of the six days appointed for their observance?

A full discussion and answer would enlighten a number who seem unable to find a proper solution to some of these doubts.

Answer.—Soldiers and sailors in the service of the Unites States were dispensed by Pope Pius IX. from the law of abstinence from flesh meat on all days of the year, except Ash Wednesday, Maundy Thursday, Good Friday, Holy Saturday, the vigil of the Assumption B. V. M., and the vigil of Christmas. With the exception of these six days, the soldiers and sailors of the U. S. Army and Navy may eat meat on all days of the year. Archbishop Kenrick, tract 4, part 2, n. 37, of his Moral Theology, says: "Concessit Pius IX., ad preces episcopi Buffalensis, ut milites et nautae Americani ab abstinentiae lege eximerentur universim, sex diebus exceptis, nempe feria quarta Cinerum, tribus ultimis hebdomadis sanctae diebus, et in vigilia Assumptionis B. M. V. et Natalis Domini. Id intelligendum

de iis qui actu inserviunt in castris, navibus, praesidiis, non autem qui ex venia absunt. Familiae cum iis communi victu utentes eo gaudent privilegio, non item quae procul degunt."

The second plenary council of Baltimore (1866) records this indult of Pius IX. in the words of Archbishop Kenrick.

1. Now it is asked: Does this papal indult include or exclude the *officers* of the U. S. Army and Navy? No mention is made of officers in the indult. The soldiers and sailors have a common mess, provided by their government. They have no choice of rations, but must eat whatever is provided by the commissary. With the officers it is different. They are not obliged to partake of the common mess, but provide their own food according to their pleasure.

The question, therefore, naturally arises: Are the officers dispensed from the common law of abstinence by the indult of Pius IX.? There seems to be no reason why they should be included along with the men, in the papal exemption. Their condition does not differ from the condition of other professional men in the various walks of life. There would seem, therefore, to exist no more reason for exempting them from the common law of abstinence than for exempting other professional men from the same law.

In the first place, it must be noted that no authoritative interpretation of the above indult has been issued by the Holy See. We are thrown back, therefore, for an interpretation of it, on the general rules of Canon Law for determining the meaning and scope of indults, as well as on the opinion of theologians, and on custom. In other words, we can give only an *interpretatio doctrinalis et usualis,* gathering the meaning of the indult from the unauthoritative explanations of the theologians and from the common usage, or the manner of using or enjoying the indult, followed by those who enjoy it. Now, one of the rules for the interpretation of papal indults is:

Favores sunt ampliandi. As generous an interpretation as possible, consistent with the words and the scope of the indult, may be given to it when its character is favorable; that is, when it grants exemptions from the common law of the Church. There can be no doubt but that the officers of the Army and Navy of the United States are soldiers and sailors. The doubt is, whether it was the intention of the Holy See to exclude them from the enjoyment of favors granted to the rank and file. *In dubio, favores sunt ampliandi.* According to the rules of interpretation, the exemption from abstinence may be extended to the officers. *"Ubi lex non distinguit, nec nos distinguere debemus."* The indult makes no distinction between officers and men; therefore neither are we obliged to make any distinction.

This indult to our soldiers and sailors is the same, practically, as those granted to the soldiers and sailors of the different European countries. It is nothing more than an extension to our soldiers and sailors of a privilege that had been enjoyed by European soldiers and sailors for many years.

It ought to be interpreted, therefore, in the same way that such indults to the soldiers and sailors of Europe are interpreted. Now, Mgr. Gousset, Archbishop of Reims, France, says, concerning the interpretation of a like indult to the French soldiers:

"Soldiers are dispensed from the law of fast and abstinence. Does this double dispensation apply to officers also, as well as to the private soldiers, even in time of peace? French officers believe that it does, relying on the common practise generally followed by them for the last fifty years. We do not approve of this practise, but neither do we condemn it. We tolerate it, and we think that confessors ought to tolerate it."

"Les soldats sont dispenses du jeune et de l'abstinence. Mais cette

double dispense est-elle pour les officiers comme pour les simples soldats, meme en temps de paix? Les officiers français le croient, se fondant sur l'usage généralement suivi par eux depuis environ cinquante ans. Nous n'approuvons point cet usage, mais nous ne le condamnons pas; nous le tolérons, et nous pensons que les confesseurs doivent le tolérer" (Theol. moral. I, 313).

Father Genicot numbers among those exempted from the law of fast and abstinence:

"Milites, saltem ii qui expensis gubernii aluntur; imo plerumque ex consuetudine ab episcopis approbata vel tolerata, milites quilibet, etiam officiales eorumque familia. In Belgio iis omnibus conceditur quotannis facultas vescendi carnibus per totum annum, excepta feria sexta Parasceves. Hac generali dispensatione data, jam videntur carnibus vesci posse milites qui ad breve tempus, domum redire permittuntur, vel etiam habitualiter extra contubernia manducant; nam indultum datur universe iis omnibus qui *actu* inter milites recensentur, neque requirit moralem impossibilitatem, quae pro officialibus eorumque familia adesse non solet" (Theol. moral. I, 449).

If this holds good for Belgian soldiers, including officers and their families, there is no reason why it should not hold good for American officers and soldiers, since all the circumstances are practically identical.

Much depends on custom or usage. But it seems to be a well-established custom among the officers of the Army and Navy of the United States to consider themselves included among the beneficiaries of this papal indult. Thus I am informed by a learned and conscientious priest, who was a chaplain for many years in the United States Navy, that he as well as the Catholic officers themselves always considered themselves as included in the papal exemption, and

that when he entered the service as chaplain, this construction of the indult was handed down to him, as a long-established usage.

From this we conclude that the officers of the U. S. Army and Navy, together with their families, may *tuta conscientia* be included among the soldiers and sailors of the United States, who by papal indult are exempted from the law of abstinence, common in the Catholic Church, on all days of the year except the six days mentioned in the indult.

(2) Does this dispensation apply to enlisted men, who live on territory adjacent to the reservation, or even on the reservation, but who, receiving a commutation of rations, can and do supply their own tables like any civilian?

Yes, the dispensation applies to them, whether officers or enlisted men, whether living on the reservation or outside of it and furnishing their own food, provided only that they belong actually to the service. The exemption from abstinence applies, as Father Genicot says, "universe iis omnibus qui *actu* inter milites recensentur; etiam iis qui habitualiter extra contubernia manducant." In Father Genicot's opinion the officers and men enjoy and may use the exemption even when absent on leave for a short time, *ad breve tempus* (*Ibid.*).

(3) Do soldiers of the U. S. Army still have to observe abstinence on Holy Thursday?

They do not. Besides their own particular exemptions, they also enjoy any exemptions granted by the Holy See, generally, to all the faithful of the United States.

Now Leo XIII., in a special indult, known as the Quadragesimal indult, to be renewed every ten years, granted to the bishops of the United States permission to allow the use of flesh meat to all the faithful on certain days throughout the year, one of which days is

Holy Thursday. As the soldiers and sailors of the U. S. Army and Navy must be reckoned among the faithful of the United States, and as the indult is general, it includes the soldiers and sailors.

With reason, therefore, Father Slater, S.J., says: "The preceding indult, allowing the use of meat on Holy Thursday, extends also to the soldiers and sailors of the United States" (Theol. moral., vol. I, on fasting). Father Slater goes farther, and says that if the soldiers and sailors of the U. S. Army and Navy can be regarded as *working men,* they can also enjoy the indult *pro operariis,* which would excuse them from abstinence on the eve of the Assumption also. Thus their days of abstinence would be reduced to four; namely, Ash Wednesday, Good Friday, Holy Saturday, and the vigil of Christmas. Even that is three days more than the soldiers of Catholic Belgium are obliged to observe.

VII. RECEIVING HOLY COMMUNION TWICE ON THE SAME DAY

In a certain town, a convent of nuns is situated about half a mile from the parish church. In the absence of the convent's chaplain, the parish priest looks after the spiritual needs of the sisters. Now, it happened some time ago, that one of the sisters was very sick, and had been so for several months and was not expected to recover. One Sunday morning the sisters' chaplain heard this sister's confession, and gave her holy Communion. He then left for the day. About noon a heavy storm began to threaten, and the sick sister became very much alarmed and thought that she was going to die. She sent for the parish priest to administer to her holy Viaticum. While the parish priest did not delay in going, nevertheless, he suspected that there was no immediate danger, and besides, he was very busy just then, having just finished the High Mass, and making preparations for Sunday-school, and Vespers, and Benediction. But his chief difficulty was that the sick sister had already on that Sunday received holy Communion, and he did not think it just right to give her holy Communion twice on the same day. However, to forestall any criticism that his refusal might give rise to, he gave the sick sister the holy Viaticum. On his way home he got a thorough drenching, which only confirmed his feeling that the sick sister should not have been given holy Communion a second time on the same day. Did he do right or wrong, in giving this person holy Communion a second time on that Sunday?

Answer.—As there was no authoritative pronouncement of the Church on this case the theologians were divided on this question. Some thought that it was not only lawful, but obligatory, to give holy Communion a second time, on the same day, in a case like this. Others thought that it was neither obligatory nor even permitted. Others, again, defended that it was not obligatory, but that it was lawful. Cardinal De Lugo treats the case (Disp. 16, num. 49, 50): *"Utrum debeat vel possit dari viaticum illi qui eadem die ex devotione communicaverat."* The Cardinal notes the fact that the theologians are not agreed on the question, and points out the reasons of their disagreement. There are really two cases in which it may happen that persons might desire to receive holy Viaticum on the same day that they had already received holy Communion *ex devotione*. *"Primo,"* says De Lugo, *"si sacerdos v. g. celebravit mane, vel laicus communicavit, cum bene valeret, et postea vel morbo subito correptus, vel vulnere aut alio casu percussus, in periculo mortis sit eadem die. Secundo, si cum jam aegrotaret mane non animo sumendi viaticum, sed ex devotione communicavit, postea vero eadem die, morbo ingravescente et morte instante, velit viaticum accipere."*

A person may be perfectly well in the morning and go to holy Communion out of devotion, and later in the day be grievously wounded in an accident, or fatally hurt in one way or another. Or, it may be that a person was suffering from some disease or sickness in the morning, when he received holy Communion, but that there was no thought of death for many days or weeks, when suddenly later in the day the patient takes a bad turn and threatens to die at any moment.

Some theologians believed that in this latter case it was not lawful to give holy Communion a second time. Others held that it was not only lawful, but obligatory. Others, again, thought that it was lawful, but not obligatory.

Pope Benedict XIV. considered all these three opinions probable, and left it to the choice of the priest, which one he would follow. He says: "In tanta opinionum doctorum discrepantia, integrum erit parocho eam sententiam amplecti, quae sibi magis arriserit" (De Synod. l. 8, c. 11).

St. Alfonsus also admits that in practise any one of these opinions may be followed with a clear conscience. Theoretically, he thinks that if a person receives holy Communion in the morning in good health, and later in the day is grievously or fatally wounded, such a person may receive Viaticum that same day; but that if the person is already sick in the morning, when receiving holy Communion, *ex devotione,* and with no danger of death present, and later in the day is placed in the danger of death, owing to a sudden aggravation of the disease, such a person may not receive holy Communion a second time. This is the opinion of De Lugo, also, who says: "Non video quomodo possit dari iterum communio eadem die."

St. Alfonsus considers this opinion of De Lugo more probable than the others. The reason for this opinion is this: If, in the early morning, when Titius received holy Communion or said Mass, he was in danger of death, although he was not cognizant of the danger at the time, because the disease, for instance, had not sufficiently developed, then it is neither obligatory nor is it even lawful for him to receive again on that day, because he has already complied with the divine precept of receiving holy Communion *in extremis,* and now it is incumbent on him to obey the precept of the Church, which forbids receiving twice on the same day. If, on the contrary, when Titius received in the morning or said Mass, he was quite well, and later in the day is fatally hurt, he is obliged to receive holy Communion again that same day, because his first Communion early in the day was not a fulfilment of the divine pre-

cept of receiving holy Communion when in danger of death, because in the morning the divine precept did not urge, since there was no danger of death, and a precept cannot be satisfied before it urges.

Among modern theologians Cardinal Gasparri holds this same opinion (de Euch. II., 1152).

All this regards the theory only. In practice, it was perfectly lawful to give this sick sister holy Communion a second time on the same day. On the other hand, it was not obligatory, and had the priest postponed it until the next morning, and in the meantime the sister had died, he could not be blamed in any way.

The solution of the case is confirmed by the new Code, Canon 864, and it will once for all settle every uncertainty in this matter. The Canon referred to rules that one who received Holy Communion and comes into danger of death the same day shall be urgently advised to receive again.

VIII. DE PROCURANDO ABORTU

A physician was called to a case of *antepartum eclampsia,* and was informed that the patient had had three convulsions. Four hours after he was called the patient had a fourth terrible convulsion. The physician at this stage contemplated calling a second physician and causing the child to be delivered by operation. There was no question, of course, of craniotomy, etc., but only of accelerating the delivery. However, the attending physician decided not to send for another doctor, nor did he attempt the operation. Medicinal treatment was resorted to. The mother thereupon became conscious, and was delivered in the natural way. The child was born alive and was immediately baptized, and it lived for ten minutes after.

Would it have been permitted for this attending physician to accelerate delivery by operation? In replying, kindly say a few words on this question of accelerating birth.—*Inquirer.*

Answer.—"Eclampsia is a very grave complication of pregnancy, characterized by convulsions and coma. If delivery is effected during these convulsions, the convulsions will cease immediately or soon after, and the maternal mortality is then about 11 per cent. If the expectant treatment is used in convulsive cases, about 28 per cent. of the mothers die. The condition is one of the most dangerous found in pregnancy." ("Past. Med.," O'Malley—Walsh.)

If pregnancy ends in the emptying of the uterus before the sixteenth week of gestation, the condition is called an *abortion;* if this happens between the sixteenth and the twenty-eighth weeks, it is a *miscarriage;* if the child is born after the twenty-eighth week, but

before the full term, the birth is *premature.* Physicians commonly use the term *abortion* for both *abortion* and *miscarriage.* The moralists call any delivery of an *unviable* child an abortion, while the delivery of a *viable* child is called a *premature birth.* If the abortion is brought about by natural causes, without artificial interference, it is called *spontaneous;* if the abortion is caused by outside interference, it is styled *artificial.* If the delivery takes place before the seventh month of gestation, or before the twenty-eighth week, it is called an *abortion,* because the child is not viable before the end of the seventh month. On the contrary, if the delivery takes place after the seventh month, but before term, that is, between the twenty-eighth and the thirty-sixth week, it is called a *premature birth,* because it is possible for a twenty-eight weeks' child to live outside the mother's womb.

1. It is lawful, *for a grave cause,* to bring about, artificially, a *premature birth.* First, we say that it is lawful, because a child, after the seventh month of gestation, is capable of living outside its mother's womb, and therefore to remove it from its mother's womb is not equivalent to killing it, since the mother's womb is not an absolute condition of its living. Secondly, we say that it is not lawful, *except for a grave cause,* to remove the child, even after the twenty-eighth week. The reason is because removing a viable child from its mother before the full term of gestation has been reached, is to expose the child's life to very serious danger, not alone of dying, but if it should live, of being weak and undeveloped. It is not lawful, however, to expose the child to this risk, except to ward off some graver evil, namely, the death of the mother or of the child.

2. It is never allowed *directly* to remove, or to cause to be removed, an *unviable* child from its mother, not even though it be the last hope of saving the mother's life.

Nunquam licet directe procurare abortum. An abortion is the removing from the mother of a child that is not yet viable, *i. e.*, before the seventh month of gestation has been completed.

It is never allowed, because such a removal is tantamount to killing the child, and it is never permitted directly to cause the death of an innocent person. Even though the unviable foetus could be delivered alive and baptized, and thus its soul's salvation procured at the same time that the mother's life is preserved, it is strictly forbidden by the Holy See. The end cannot justify the means. A child that is not seven months cannot live outside its mother's womb. To remove it thence is to kill it. To kill it is to kill the innocent without justification. That is murder. Therefore there is a long list of prohibitions by the Holy See declaring the unlawfulness of directly procuring abortion, even though it be the only means of saving the mother's life, and the unborn child is doomed to die by nature in any case. Both the mother and child must be left to die, since it is not lawful to save the mother by destroying the child.

In the latest edition of his Moral Theology, 1910, Father Lehmkuhl says concerning this matter: "In former editions I endeavored to bring forward reasons that might probably justify the violent invasion of the unviable foetus and its vital element as a last resort for saving the mother's life. And although I proposed the matter as doubtful, not trusting to my own judgment in so grave a matter, still I thought that the considerations which I presented might have some weight in rendering less sure an obligation that created the very greatest hardships both for physicians and mothers. The reasons I advanced were these: The unviable foetus has a right to its vital element, namely, to dwell in its mother's womb, since nature has created this element for the child. But when special circum-

stances arise (as, for instance, when the mother's life is in jeopardy), the child's right to dwell in its mother's womb must give way to a prior right, namely, to the mother's right to preserve her own life. In this conflict of rights the child may be supposed to waive its right in favor of its mother. Living in its mother's womb is a condition extrinsic (*bonum vitae extrinsecum*) to the real life of the child, and therefore, for just and sufficient reasons, the child may sacrifice it, as a shipwrecked man may waive his right to a plank in favor of his friend, and trust himself to the waves, which speedily swallow him up. Indeed, it may be affirmed that the child does, in as far as it can, waive its right to dwell in its mother's womb, since the right has become wholly worthless, owing to circumstances, and not being necessary as a condition for procuring the child's baptism, since the child's baptism will be surer in the event of an abortion. And if dwelling in the mother's womb be considered as an intrinsic part of the child's life, *bonum vitae intrinsecum,* still any attack on the child's existence in the womb does not seem to be an attack on the child itself, but rather an attack on something common both to mother and child, to which the mother has as much right as the child, and in this dilemma the child yields its precarious right to its mother, just as one person might yield to another, where there is not air enough to keep both alive."

These were some of the considerations that led Father Lehmkuhl to say, in the earlier editions of his Moral Theology, that it was not clearly and beyond all doubt immoral to cause a premature delivery of an unviable child, when the same held out the only possible hope of saving the mother's life.

But all this notwithstanding, the Holy Office has repeatedly declared that artificial premature delivery, or abortion, is the same as craniotomy, is a direct killing of the child, and always and under all

circumstances forbidden by the law of God. And Father Lehmkuhl admits that the reasons he brought forward in favor of artificial abortion *speciosiores sunt quam veriores* (Theol. moral. I., n. 1007).

In regard to the case under discussion, it is quite evident that if the woman was already past the seventh month of her pregnancy, artificial delivery might be resorted to to save the mother's life.

"When the grave complications enumerated above occur in the early months of pregnancy before the foetus is viable, the Catholic physician, since by the natural law and the decisions of the Holy Office he is forbidden to induce artificial abortion, must withdraw from the case. If there is no other physician to attend to the woman, he must let her die. He cannot withdraw without explanation, and in many cases the explanation of the condition will promptly result in the calling in of a physician who has no scruple in inducing this abortion, no matter how reputable he may be. The universal medical doctrine is to induce abortion in cases where abortion will save the mother's life, and the foetus is 'too young to amount to anything.' This is looked upon as legitimate abortion by the very best men that do not recognize the authority of the Holy Office; they deem the position of the Catholic physician in these cases as altogether erroneous, or even criminal" ("Past. Med.," p. 54, O'Malley & Walsh).

To resume, if the eclampsia occurred after the twenty-eighth week of gestation, an operation to hasten the delivery would have been lawful, since a seven months' child is viable, even though the chances are greatly against the child's living. If the child dies after being delivered, its death is not a *necessary* result of the operation, since many children live although prematurely delivered.

If the eclampsia occurs before the twenty-eighth week of gestation, it is not lawful to empty the uterus, though that is the only

means of saving the mother's life, because such a procedure is a direct killing of the child. And what is said here of an operation holds equally well in regard to the administration of medicine. If the direct effect of the medicine is to empty the uterus, it is not lawful to administer it, except after the seventh month of gestation.

IX. A MINOR'S OBLIGATION TO RESTORE

Henry, a young man, with a reputation of being wild and a poor Catholic, confesses that once, when a minor and under 21 years of age, he borrowed a dollar from a saloon-keeper and also contracted a debt of ten dollars for liquor with the same man. Later on the saloon-keeper had Henry arrested for causing a disturbance in his saloon, and was so active in prosecuting the case that Henry was sent to jail for a month. Henry has not paid the debt he owes the saloon-keeper and refuses to pay it, as he thinks the saloon-keeper has already injured him more than the equivalent of what he owes. The saloon-keeper has consulted a lawyer about collecting the debt, and was told that he could not, as Henry was a minor. Moreover, Henry says that, if he were compelled to pay the debt, he could prosecute the saloon-keeper for selling liquor to a minor. The confessor thought that Henry was bound to pay the debt, but, fearing to drive him away from the Sacraments altogether, he absolved him. Was Henry bound in conscience to pay this debt?

Answer.—Generally, all persons may bind themselves by contracts, unless incapacitated either by nature or by law. Now, the civil law declares that the contract of an infant, if not for necessaries, is voidable, but not void. An infant, in law, is a person under 21 years of age. An infant may disavow his contract and so annul it, either before his majority or within a reasonable time after it. In the case before us, Henry, being a minor at the time he contracted the debt for liquor, is not bound by the civil law to pay it. Neither are his parents or guardians bound to pay it, since it was not a debt

for the necessaries of life. Now, the question arises, does the civil law discharge Henry's *conscience* from paying this debt, or only his person. In other words, although the civil law denies the saloon-keeper an action against Henry in the courts to recover this debt, is Henry, nevertheless, bound in conscience to pay it? He is not bound in law; is he bound in equity? The civil code, in thus protecting the minor, confers a twofold privilege on him: "First, it declares the contracts of minors voidable, unless very special formalities of law are complied with. Secondly, if the minor rescinds the contract, he is not bound to make restitution for any damage the other party to the contract sustains, unless he still have in his possession the other party's property or its equivalent. If, now, we suppose that Henry obtained the ten-dollar's worth of liquor that he got from the saloon-keeper without fraud, that is, without representing himself as over 21 years of age, then he is not bound in conscience to pay for it, since the liquor was *ad usus inutiles et prodigos,* and the law voids such contracts and annuls any obligation of the minor party to them to make restitution. In fact, the minor's conscience is discharged from all obligation of restitution, even though the minor, before obtaining credit, had to promise, or did of his own free will promise, to waive his rights under the law and not to take advantage of the statute. If a minor, without consent of his father, buys anything, he cannot be forced to accept it or to pay for it. If he has accepted the goods purchased and paid for them, he may return them to the vendor and must be given back his money. If he has consumed or lost the thing purchased before paying for it, he cannot be held in conscience for the purchase price. If a minor, without the consent of his father or guardian, borrows money and uses it for foolish purposes, he is not obliged to make restitution, even though, after reaching his majority, he be well able to do so. This

is, of course, provided no deception has been practised by the minor in obtaining the money. But if the money has been used for *necessary* or *useful* purposes, then the minor is obliged to pay, because in that case he has really derived a benefit from the money, and is in so far better off than he was before, and from such an obligation it is not the purpose of the law to release him. The purpose of the law is to protect the young, who have as yet an imperfect knowledge of the value of things and the obligation of contracts, from the snares of the designing, and the wiles of dishonest and deceitful men. If such men take advantage of the youth, and thoughtlessness, and inexperience of minors for their own profit, they do so at their own risk, and it is well that they should suffer, for the protection of the weak and ignorant. The damage that they suffer must be charged to themselves.

This is the general teaching of the theologians. Thus, for instance, Father Lehmkuhl I. 1253, says:

"Difficilior est questio, teneatur ne solvere aes alienum contractum ex compotationibus aliisve prodigis actionibus, vel ex pecunia mutuo accepta ad ejusmodi usus malos et prodigos, si alter, v. g. caupo, sciens minori haec praestiterat, ut is genio suo posset indulgere, quando lex positiva jus debita exigendi creditori neget; aliis verbis, potest ne talis lex ita accipi, ut in poenam cooperationis illicitae jus creditoris prorsus extinguatur, an ita tantum, ut sola actio judicialis denegetur?

Jus Romanum sic revera constituit de *pecunia mutuo accepta.* Quare si consumpta est ad fines utiles vel etiam ad eas recreationes, ad quas spectata conditione pater adolescentis pecuniam daturus fuisset, reddenda quidem est; at si exhausta est ad *usus excessivos et inutiles,* neque minor fraudulenter egit nec sui juris (in casibus exceptis) erat aut esse videbatur; ex complurium sententia ne postea

quidem, quando major evasit, in conscientia est reddenda. Ita *Lessius,* de just. et jure, l. 2, c. 20, n. 8 ss; *Laymann,* l. 3, tr. 4, p. 3, c. 15; *Molina,* etc., *Reuter,* III., n. 151, in fine. Id ex jure Romano. Neque recentiora jura contradicere videntur, cum negent filios minores *firmiter* contrahere posse sine consensu curatoris."

Conclusion.—Henry is not obliged in conscience to settle for this ten-dollar liquor bill, neither now nor at any future time, whether he be able to do so or not. This should be explained to him, to remove any doubts that might lurk in his conscience. As for the one dollar that he borrowed from the saloon-keeper, that also he is not obliged to return, if he used it for liquor or gambling, etc. If he used it for a good or useful purpose, he must return it. However, as it was a *materia levis,* it need cause no anxiety.

X. EXCOMMUNICATION ON ACCOUNT OF ABORTION

Bertha is urged by her husband Titius to take a certain kind of medicine in order to procure an abortion. She hesitates for some time, and finally consults her mother about it. The mother is more or less non-committal. She prefers not to interfere. She does not advise the abortion, fearing the consequences to her daughter; neither does she endeavor to persuade the daughter against committing the act. Finally, Bertha makes up her mind to take the medicine, to the satisfaction of her husband. The consequence is that an abortion follows, and Bertha very nearly loses her life. The experience has been a very dear one, and all three are very repentant. They are all Catholics. Are they all excommunicated? Are special faculties required to absolve them?

Answer.—Let us consider, first, the case of Bertha, who takes the medicine and causes the abortion. Does a mother who procures an abortion on herself incur excommunication? It seemed probable that she does not. It is quite true that Pius IX., in the bull *Apostolicae Sedis,* 1869, expressly says that "*procurantes abortum, effectu secuto*" incur excommunication, and that the excommunication is reserved to the bishops. Now it would appear that if any one ought to be numbered among the *procurantes abortum,* it surely would be the mother who procures an abortion on herself. Nevertheless, there are very grave theologians, among others St. Alfonsus, who maintain that the mother herself is not included among the "*procurantes abortum*" whom the papal decrees punish by excommunication.

They do not affirm that it is altogether *certain* that the bull *Apostolicae Sedis* of Pius IX. does not include the mother herself among the *"procurantes abortum"* who incur excommunication, but they do maintain that it is *probable* that the bull does not include her. Their line of argument is this: In all the papal bulls anterior to the bull *Apostolicae Sedis* of Pius IX., 1869, in which excommunication is decreed against *procurantes abortum,* a distinction is made between the *mother* herself and the other *procurantes abortum,* and the mother was never included among those who incurred excommunication for procuring abortion, even though the term *"procurantes abortum"* was always employed in such papal decrees. St. Alfonsus considers the opinion which says that the mother herself does not incur the excommunication as altogether probable, by reason of the number and weight of the theologians who defend it; and if the reasons on which it rests be considered, he thought it far more probable than the opinion which maintains that the mother does incur the excommunication.

At the time that Pius IX. issued the bull *Apostolicae Sedis* in 1869, and long before it, the term *"procurantes abortum"* had come to have a very special and restricted meaning, excluding the mother from the number of those who were included in the term *procurantes abortum.* When Pius IX., therefore, used the term *procurantes abortum,* in the bull *Apostolicae Sedis,* he was cognizant of this special and technical sense in which it was generally used and understood by the theologians and canonists, and as he used it in his decree without any qualification or explanation, he is justly supposed to have used it in the peculiar sense in which it was used in the law, and, therefore, that he used it in its sense of excluding the mother. Weight is added to this view, if we bear in mind that the purpose of Pius IX. in publishing the bull *Apostolicae Sedis* in 1869

was to curtail both the number and the application of the excommunications at that time prevailing in the Church.

It is probable, therefore, that Bertha did not incur the excommunication decreed by Pius IX. against *"procurantes abortum."* Would a simple confessor be justified, therefore, in absolving Bertha without first procuring special faculties, at least *ad cautelam,* in case, *de facto,* Bertha did incur the excommunication? In that case, a simple confessor would not require any special faculties to absolve Bertha, *neque ad validam, neque ad licitam absolutionem.* There exists here a *dubium juris,* that is, a doubt about the interpretation of the law. Now whenever there exists a *dubium juris,* that is, whenever the theologians do not agree as to the meaning and interpretation of a law, whether, namely, the law deprives the confessor of jurisdiction in the confessional in certain cases or not, then the confessor may absolve validly and licitly in such cases, and if, *de facto,* the case should be reserved, then the Church supplies the necessary jurisdiction to absolve from it. In this way the jurisdiction of the simple confessor which is in Bertha's case *theoretically* doubtful, became *practically* certain; and Bertha is absolved not *jurisdictione dubia, sed jurisdictione practice certa. In dubio juris, Ecclesia supplet.*

So much as to the history of the case as it refers to the mother. The new Code besides repeating the words of the Bull *"Apostolicae Sedis,"* adds that the mother is not excepted from the excommunication. Thus Canon 2350. The other principles here explained are not changed by the Code.

But, again, let us suppose that the woman or mother who procures an abortion on herself is included in the Bull of Pius IX. The case is a papal reservation and ignorance of the reservation saves a person from incurring papal censure. For what the Pope reserves is not the sin, but the censure; in our case, the excommunication. The purpose of the Holy See is to deter from the sin of abortion by punishing it by excommunication and reserving the

excommunication. But if a woman does not know of the excommunication attaching to abortion or that it is reserved, how can the excommunication act as a deterrent? If the purpose of the censure fails, then the censure itself fails, for it becomes useless. In the case before us, although Bertha may have been fully aware of the gravity of the sin she was committing, still if she did not know that she incurred excommunication by it or that the excommunication was reserved, she did not, in fact, incur the excommunication, and no special faculties are required to absolve her.

2. In regard to the husband, Titius, who urged his wife to take the medicine for the purpose of causing an abortion, it is certain, that under the law, as it existed up to the time of Pius IX., he incurred the excommunication. For in the bull *Effraenatam,* of Sixtus V., not only *procurantes abortum* incurred excommunication, but also all persons who by assistance, or counsel, or favor, aided or abetted in procuring abortions, provided they acted knowingly. In the Bull *Apostolicae Sedis,* Pius IX. restricts this excommunication to the *procurantes abortum.* Therefore, all those who only *cooperate* but do not *procure* the abortion, do not incur the excommunication.

According to Pope Sixtus V., these are to be considered as *procurantes abortum, "qui de cetero per se, aut interpositas personas abortus seu foetus immaturi ejectionem procuraverint, percussionibus, venenis, medicamentis, potionibus, oneribus, laboribusque mulieri pregnanti impositis, ac aliis etiam incognitis vel maxime exquisitis rationibus, ita ut reapse abortus inde secutus fuerit."* The sense of the *procurantes abortum* of the bull of Pius IX. must be gathered from these words of the Bull *Effraenatam* of Sixtus V. According to these words of Sixtus V., it would be difficult to include Titius among the *procurantes abortum,* since all he did was to urge his wife to take the potion. He must be numbered among the *cooperantes ad abortum,* but not among the *procurantes abortum.*

These latter, however, are the only ones now who incur excommunication. No special faculties are required, therefore, to absolve Titius.

3. There can be no question about Bertha's mother. She incurred no censure. She was scarcely a *cooperans negative*. Of course, she sinned mortally. So did the others; but sin and censures are two very different things.

XI. THE LAW OF ABSTAINING FROM FLESH MEAT

John, a business man, was in the diocese of P. on business, on a Friday, when a dispensation from the abstinence from flesh meat was granted by the Holy See to the whole diocese of P. John was not a diocesan of P. but knowing that all the Catholics of the diocese had permission to eat meat on that Friday, he also ate it. He did the same on another occasion, being invited by a friend to spend a few days with him. On New-Year's day, which fell on a Friday, he went to a neighboring city, outside of his own diocese, purposely to eat meat, because in his own diocese no dispensation from the abstinence had been announced, whilst in the neighboring diocese such a dispensation had been published. Did John commit a sin in any of these instances?

Answer.—John did not commit any sin, either in the first or the second instance. This is evident from the very nature of the law of abstinence itself. A law differs from a personal command or precept in this, that a personal precept affects the individual person, following him like his shadow, say the canonists, and "sticking to his bones" (*adhaeret ossibus*), whilst a law affects immediately a definite territory and only mediately the inhabitants of the territory. A personal mandate or precept follows the individual to whom it has been given wherever he goes and is not restricted to any territory or district. Thus if a bishop issues faculties to a priest, with the condition that they are revoked *ipso facto* the first time the priest enters a saloon to drink, then it makes no difference whether the priest enters a saloon within the limits of the diocese, or outside the

limits, he loses his faculties, because he transgresses a *personal precept,* given to him individually, and which is not restricted by the limits of the diocese. But if a bishop makes a general rule for all the priests of his diocese, that they are suspended *ipso facto,* for entering a saloon, then such a rule is a law and is operative only within the limits of the diocese, and if a priest of the diocese transgresses outside the diocese, he does not incur suspension.

Those, therefore, who are outside the territory affected by a law, are not bound by the law. The law of abstinence from flesh meat on Fridays is a general law of the Church and binding on all Catholics in all places, except where certain places or persons have been exempted by special dispensation. The diocese of P. on the Friday mentioned was exempted from the law. The exemption affected immediately the territory and only mediately the inhabitants of the district. Any inhabitant of the diocese of P. who on that Friday left the diocese would be bound by the law of abstinence, as soon as he crossed the diocesan border, and anyone living outside the diocese, would be exempted from abstinence the moment he entered the diocese. The law does not oblige anyone to remain within its domain, but obliges those who are within the territory affected by the law to keep the law.

In the third instance, cited above, where John leaves his own diocese on purpose to evade the law, the common opinion of theologians is also that he does not commit any sin, as far as the Church's law of abstinence is concerned. He might sin by gluttony or scandal, but not against the law of abstinence. The law of abstinence binds John as long as he remains within the territory or district subject to the law, but the law does not forbid John to leave the district, even in order to evade the law. Therefore, when John left his own diocese on New-Year's day, where he believed the law

of abstinence to be in force, and went to a neighboring diocese, where the law was suspended, he only made use of his right to go where he pleased, as long as it was not forbidden by the law.

It cannot be maintained that the will of the Holy See, in granting a dispensation from the Friday abstinence to a certain diocese, is that only the bona fide inhabitants of the diocese are to enjoy it. For, since such will of the Holy See would be contrary to the very nature of law, it must be clearly proven to exist before it can be allowed. In some particular instances the Holy See has expressly forbidden leaving the territory to evade the law in *fraudem legis;* as, for example, Urban VIII. forbade leaving the territory to evade the law of clandestinity in marriage, and Clement VIII. forbade leaving the territory to escape reservation. But unless it be expressly forbidden, everyone is free to withdraw from a territory affected by a law, in order to evade or escape the law. This must be regarded as the general principle and the prohibition to leave the district *in fraudem legis* is the exception. Therefore, as far as the Church's law of abstinence from flesh meat on Friday is concerned, John did not in any way sin against this law by leaving the territory where it was binding and going elsewhere, where it did not bind, even though he did so purposely, in order to escape the law.

But independently of the law of abstinence, it is very possible that John may have sinned in this third instance against the law of God, forbidding gluttony and scandal. But under ordinary circumstances, such gluttony or scandal would scarcely amount to a mortal sin.

XII. SOME LITURGICAL QUESTIONS CONCERNING HOLY MASS

1. Is it permitted for the priest, while he genuflects and elevates the sacred species after the consecration of the Mass, to say some vocal prayers, like: *Credo, Dme* or *Adoro te?*

2. Is it right for another priest to take the ciborium that has just been consecrated in the Mass, immediately after the consecration, and to distribute holy Communion from it?

3. Is it permitted for the celebrant of a high Mass to recite his office while the choir sings the *Gloria* and *Credo?*

Answer.—1. It is not permitted for the celebrant of the Mass to say any vocal prayers during the Mass, except such as are contained in the Missal. Pope Pius V., in the Bull *"Quo primum,"* which is inserted at the beginning of the Roman Missal, strictly ordains: *Ne in Missae celebratione alias ceremonias vel preces, quam quae missali continentur addere vel recitare praesumant.* And the Council of Trent admonishes bishops *ut caveant ne sacerdotes ritus alios, aut alias ceremonias et preces in missarum celebratione adhibeant* (Sess. XXII. *de observandis in celebratione Missae*). It is permitted to pray mentally and to elicit acts of faith, hope and charity within the soul, but it is forbidden to express them with the lips or voice. If it were permitted to say vocal prayers during the Mass, one can easily imagine to what abuses it would lead in a very short time. There are some theologians, *v. g.*, Noldin, S.J. (*de Euch.* 210) who say that it is permissible to recite vocal prayers in the Mass while genuflecting or incensing the altar, etc., as such a practise does not seem to be contrary to the rubrics. Still the practise does appear to

be contrary to the prescriptions of St. Pius V. and the Council of Trent and ought to be discouraged.

2. It is not permitted to distribute holy Communion to the faithful during Mass, from a ciborium consecrated in that Mass, unless after the communion of the celebrant.

The question was put to the Congregation of Rites at Rome, May 11, 1878:

"Valetne sustineri usus aliquarum ecclesiarum, in quibus ratione concursus ingentis populi, cum non sufficiat multitudini pro sacra communione quantitas hostiarum, jam celebrata nova missa, statim a consecratione reassumitur distributio communionis?" The Sacred Congregation answered: *"Abusum esse interdicendum."*

The reason of this answer is ready to hand. The sacred species contained in the ciborium that has just been consecrated are a part of the sacrifice of the Mass in which they have been consecrated, and as such should not be consumed until the communion of the Mass.

3. It is not strictly proper for the celebrant of a high Mass to recite his breviary while the choir sings the *Gloria* or *Credo.* The question was proposed to the Sacred Congregation of Rites, March 20, 1869: *An ministri parati, dum canitur Missa solemnis, privatim recitare valeant horas cononicas?* The Sacred Congregation answered: *non esse interloquendum,* which means that it is so evident that the officers of a solemn Mass should not recite the divine office during the Mass, that the question should not be asked as being an idle one. This can easily be gathered both from the bull of Pius V. and the prescriptions of the Council of Trent, quoted above.

The singing of the *Gloria* and *Credo,* as well as of the other parts of the Mass by the choir, is a part of the liturgical service or rite of the Mass. To introduce the recitation of the breviary into them is certainly adding to the rite something external to it, which is not

found in the Missal, and which is not authorized by the Church. Nor should the deacon or subdeacon of a solemn Mass recite the office during any part of the Mass. The same reasons apply to them as to the celebrant. Even during the sermon at a solemn Mass, the ministers of the Mass should not recite the divine office, but should rather listen patiently, if not piously, to the sermon, and thereby avoid disedifying or scandalizing the faithful.

XIII. THE DISPENSATION *SUPER IMPEDIMENTO CONSANGUINITATIS*

Two first cousins desire to be married. The reason they advance for so desiring is that a child has already been born to them. Through their pastor they apply to the Holy See for a dispensation *super impedimento consanguinitatis in secundo gradu aequali.* But before the arrival of the dispensation, the man changes his mind about marrying his cousin, and marries another girl. After some time his wife dies, and he now desires again to marry his cousin. The dispensation that he sought from the Holy See in the first instance is now over a year old. Is it still available?

Answer.—The dispensation is available or holds good still, whether the pastor has fulminated it already or not. In case the dispensation has never been fulminated, it may be fulminated now. In case it has already been fulminated, the parties in whose favor it was granted may still make use of it. The reason that the dispensation is still good, although over a year has elapsed since it was granted, and although the parties made no use of it when it was granted, is that nothing has happened since the dispensation was granted which would invalidate it. This dispensation is known in Canon Law as a rescript *non tantum gratiae faciendae, sed gratiae factae.* There exists this distinction between a *gratia facienda* and a *gratia facta,* that the former expires with the death of the superior granting it, if the case has not yet been opened, or, as they say in the law, *re adhuc integra;* while a *gratia facta* takes effect as soon as it is granted and the papers signed and sealed, and is not extinguished by the death of the grantor. If

this papal dispensation, granting these two first cousins permission to marry were a *rescriptum gratiae faciendae,* it would become invalid if the Pope died before it was fulminated. But, as it is considered a *rescriptum gratiae factae,* it would still be good even though in the meantime the Pope had died. Besides the death of the Pope, however, there are other causes that may invalidate papal rescripts, even rescripts containing favors. Such causes are:

(1) If the motive for granting the favor or dispensation ceases;

(2) The implied or expressed revocation of the rescript by the one granting it;

(3) The implicit or explicit renunciation of the favor by those to whom it was granted.

Now, in the case here submitted, none of these causes are verified and, therefore, the rescript is still valid. The motive for granting the dispensation was the existence of a child, born to these first cousins outside of wedlock. But that reason still holds good. The child is still living. There is no question of the Holy See having revoked the dispensation, since such a revocation is not presumed in law, but must be proved. Nor can it be presumed that the recipients of the dispensation have renounced their claims to it. That the man did not use it, when it was first granted, but married someone else, is not an implied renunciation of the dispensation. St. Alfonsus treats the question: "Quando intelligatur facta tacita renunciatio dispensatio? Alii dicunt, quando dispensatus per decennium illa non utitur, cum uti possit, ut ait Martin. Alii (ut Sanchez et Bordon) quando dispensatus actum contrarium ponit, puta, si obtenta dispensatione ad contrahendum cum una, quaerat inde contrahere cum alia; sed per ista signa nullo modo censeri factam esse renunciationem, tenendum esse dicunt Salman ticenses, cum Suarez et Tap. Hinc inquiunt, quod dispensatus ad

contrahendum cum una, bene possit illa dispensatione uti etiam postquam cum alia contraxerit, quae mortua sit; vel postquam emiserit votum castitatis, voti dispensatione postea tantum obtenta." L. 1, 198.

But suppose the child dies before these two cousins get married, may they still use the dispensation? If the child dies before the rescript is fulminated, then they cannot use it, as it becomes invalid. The pastor, in this case, is delegated by the Holy See to execute the dispensation. He cannot, however, validly execute the dispensation, except on the condition, which is either expressed in the rescript or at least understood, namely: *si preces veritate nitantur*. By this formula it is required that the motive for which the dispensation was granted still exist. This motive, in the present case, was the existence of the child, which was the sole reason urged why the dispensation should be granted. Now, if this reason no longer exists, the only reason for the dispensation disappears, and as it has not been executed, it becomes invalid. But if the child died only after the dispensation was executed or fulminated, then the cousins may still use it, because as soon as it is executed, it removes the impediment of consanguinity and enables the cousins to marry, and the impediment once removed, does not revive according to the rule of Canon Law: *Factum legitime retractari non debet, licet casus veniat in quo non potuit inchoari.* Reg. 73, in sexto. Therefore, this dispensation, being fulminated, has already produced its effect and cannot be retracted by a supervening fact, nor can the impediment of consanguinity, once removed, be revived.

XIV. IS IT LAWFUL TO MAKE ANOTHER PERSON DRUNK?

A mother of a family was obliged to undergo an operation for the removal of a tumor from her arm. The tumor was a large one and had completely paralyzed the arm. The surgeon who was called in to perform the operation decided, after a thorough examination, that the woman's heart was too weak to stand a sufficient amount of ether to make the operation possible. He suggested that the patient take a sufficient amount of whiskey to intoxicate her, and that then a very small amount of ether would suffice for the operation. This the woman refused to do unless her parish priest himself gave her the whiskey. After hearing her confession and giving her holy Communion, the parish priest gave her a sufficient quantity of whiskey to intoxicate her, and then the surgeons etherized her a little and successfully removed the tumor. Now it is asked:

1. In what does inebriety consist?
2. Is it ever lawful to make others drunk?
3. What is to be said about this particular case?

Drunkenness consists in drinking enough of whiskey or other alcoholic drink to deprive one of the use of one's senses and judgment. When a man has consumed so much alcoholic drink that it deprives him of the use of his reason, so that he is no longer able to distinguish between what is right and what is wrong, he is said to be *theologically* drunk. Complete drunkenness is, as a rule, a mortal sin. The malice of the sin does not consist merely in depriving oneself of the use of one's reason, for that is allowed for suffi-

cient reasons, but in depriving oneself of the use of reason in an unnatural and brutal way, by the inordinate use of intoxicating liquor, and that without any sufficient cause or justification. Where there is a just and adequate cause, it is not a sin to deprive oneself of the use of reason for a time. Thus theologians generally admit that whiskey or other intoxicants may be used as a substitute for chloroform, or to counteract the effects of poison. To drink to excess, but still not so as to lose the use of one's judgment, is, in itself, and aside from other considerations, a venial sin. But even such kind of drinking may become a mortal sin, either on account of the harm one does oneself or the harm one does one's family, or on account of the scandal such drinking causes, or other grave sins to which it leads.

2. Is it a sin to make others drunk?

Generally speaking, it is a sin to make others drunk, if we do so knowingly and willingly and *without sufficient cause.* But there are very exceptional cases when it is lawful to make another drunk. If we induce others to drink so that they become altogether drunk and lose the use of their reason for the time being, even though, while drinking, they are aware of what they are doing and of the result that will follow, we commit a mortal sin, because we cause our neighbor a grave spiritual damage, leading him into mortal sin. If our neighbor is not aware that he is being made drunk, then he does not commit a mortal sin and we do not cause him any *spiritual* harm; nevertheless, we cause him grave *temporal* harm by depriving him, without his knowledge, of the temporary use of his reason; and that is a mortal sin. To induce another to drink until he is completely intoxicated, even though he knows what he is doing and that he is being made drunk, is to induce another to commit grievous sin, which is never allowed, unless it be for the

purpose of preventing him from committing a greater crime, to which his mind is fully made up. Thus to prevent a man from committing a murder, which he is thoroughly resolved to commit, we may lawfully make him drunk. In this case we choose the lesser of two evils and diminish the crime of our fellow man, which is doing good. To be the *occasion* of another person's drinking to intoxication is not the same as being the *cause* of his intoxication. Still it is not lawful even to be the *occasion* of another man's drunkenness, unless there be a good and adequate justification. Otherwise, by being the occasion even of our neighbor's intoxication or inebriation, we commit a mortal sin against the love we owe our neighbor.

To deceive another and to trick him into becoming drunk, is to commit a grievous sin against justice and also against the virtue of temperance, unless it is done to prevent some greater crime. Thus it is lawful to make an insane man drunk, if he is violently insane and dangerous and there be no other way of controlling him until he is returned to the insane asylum.

3. As regards the case of this woman, the parish priest was justified in inducing her to take sufficient whiskey to intoxicate her, since it was done for a good and sufficient reason. The woman would have been perfectly justified in taking sufficient chloroform to anesthetize her; that is, to render her insensible and to deprive her, for a time, of the use of her reason. For the same cause she may take whiskey in order to produce the same state of insensibility, especially since her heart is too weak to support any other kind of anesthetic.

Especially was this lawful, since she had received the Sacraments and was in the state of grace and prepared to die. And even though the parish priest placed the woman in danger of dying while

intoxicated, he did not do anything wrong or unlawful, since many people die on the operating-table or before coming out of the ether, and no one ever thought that, for that reason, it was wrong to put them under the anesthetic. The whole case hinges on the justification that there is for the temporary deprivation of the use of one's reason and judgment. All deprivation of the use of the reason is not wrong, but only such deprivation as is not justified by good and sufficient reasons. But to enable one to undergo a surgical operation, the use of whiskey is permitted by the theologians, just the same as the use of chloroform or other anesthetic, even though it deprives the patient, for a time, of the use of the reason and judgment. Therefore, this parish priest not only did not do anything wrong, in this instance, but did good.

XV. IMPEDIMENT OF CRIME

Titius and Bertha, both Catholics, were validly married and lived together for some years. Then Bertha divorced Titius and contracted a civil marriage with Sempronius, a non-Catholic. Some time after this Titius, the Catholic husband, died. Now Bertha desires to have her marriage to Sempronius, the non-Catholic, sanctioned by the Church. What is necessary to have this done?

Answer.—The principal bar to the marriage of Bertha with Sempronius is the diriment impediment of crime. The Church has made or decreed that certain crimes shall act as a nullifying impediment to the subsequent marriage of those who commit them. These crimes are:

1. Murder of a married person, when the wife or husband has brought it about by conspiring with another man or woman;

2. Adultery by husband or wife with a third person, accompanied by a promise to marry that person after the death of the other spouse;

3. Murder and adultery together, as when a man and a woman commit adultery and one of them murders his consort in order to marry his accomplice in adultery.

The reason of this law of the Church is to remove, as far as possible, the motive of such crimes. The Church wishes to punish those who inflict this injury on the innocent husband or wife, by making it impossible for them to marry one another. The Church thus protects the innocent consort by destroying the hope of future marriage of a guilty husband or wife with a third person,

which hope might impel them to commit murder or adultery. This law is older even than the Catholic Church, for it goes back to the time of the Romans. The "lex Julia" forbade the marriage of adulterers, even though the first marriage were subsequently dissolved, and even though there had been no promise of a future marriage between the adulterers, and no murder had been committed with marriage in view.

The early Church took over this legislation of the Romans and Pope St. Leo decreed: *"Nullus ducat in matrimonium, quam prius polluit adulterio"* and these words of St. Leo have become the *rubric* or title of the decrees or the canons against the marriage of adulterers or murderers, as contained in the *corpus juris canonici.*

At first there was a general prohibition, nullifying future marriages of adulterers or murderers conspiring in the death of husband or wife. Gradually, however, certain restrictions of this general prohibition were introduced into the legislation of the Church. It became necessary that a promise of marriage should accompany the adultery and conspiracy should characterize the murder, unless both adultery and murder were involved in the same case. This impediment is one of the oldest, therefore, of all the diriment impediments to marriage created by the Church. And the reasons that first impelled the Church to make these crimes a diriment impediment to marriage are still so powerful in the world to induce the Church to continue them in her legislation concerning the Sacrament of Matrimony.

The crime of adultery, in order that it act as a diriment impediment to the marriage of the persons guilty of it, must be coupled with a promise of marriage.

"Licet autem in canonibus habeatur ut nullus copulet matrimonio, quam prius polluerat adulterio, et illam maxime, cui fidem dederat,

uxore sua vivente, vel quae machinata est in mortem uxoris." (Alexander III., cap. Laudabilem i, de convers. infid.)

Adultery alone, or a promise of marriage alone, does not constitute the impediment; the adultery must be coupled with the promise of marriage before the death of the innocent consort. It is immaterial whether the promise of marriage precede or follow the act of adultery. The act of adultery, of which there is question here, is adultery in the eyes of the Church; that is, at least one of the persons guilty of it must be at the time united in valid wedlock in the eyes of the Church. If the marriage be only valid in the eyes of the civil law, but invalid according to the Canon Law, no impediment arises, because there is no adultery, but only fornication. Both parties committing adultery must be cognizant of the adulterous nature of the act. In other words, it is necessary that the adultery be *formal* on both sides. If one of the guilty parties is ignorant that the other one is a married person, then there is no *formal* adultery on that person's part, and therefore no impediment to their future marriage after the death of husband or wife. It must be noted, in regard to the promise of marriage that is required to create a diriment impediment, that the promise to marry *after the death* of the innocent consort is the only marriage promise contemplated in the law. If one of the guilty parties promised the other to marry them *as soon as they would obtain a civil divorce,* no impediment arises, because there is no promise to marry *post mortem conjugis.* cf. Schmalzgruber, IV, 7, n. 9.

If, instead of promising to marry, the parties guilty of the adultery actually get married, either before a civil magistrate or a non-Catholic minister of worship, then the *matrimonium attentatum,* coupled with a previous or subsequent cohabitation, creates the diriment impediment. This has always been the law. It is

immaterial whether the civil marriage precede the adultery or is subsequent to it. The Congr. de Prop. Fide, Jan. 14th, 1844, decreed:

"Contrahere autem seu attentare matrimonium de praesenti est inire nuptias, utique invalide, per verba de praesenti vel per aliquod aliud signum quod consensus promissionem includat: nihil tamen refert an adulterium praecesserit attentationem matrimonii vel subsequatur: ut assumptio concubinae seu potius adulterae habeatur in casu ut vera matrimonii attentatio, opus est ut includat promissionem matrimonii sive de praesenti, sive de futuro."

It is necessary, however, that both the civil marriage and the cohabitation or adultery should take place before the death of the innocent consort, *ante mortem alterius conjugis.* If two persons, one or both of whom are already validly married to other persons, attempt to get married civilly and, failing in the attempt, give up the idea of marriage and afterwards commit adultery, there will be no diriment impediment on this score to their future marriage. It is required that both parties to the second marriage have knowledge of the previous marriage. It may be that at the time of the second marriage the woman to it did not know that the man she was marrying had a wife living, although divorced. In that case, if she continues the relation after learning of the divorced wife, she contracts the impediment and may not marry validly the man with whom she is living, even after the divorced wife's death.

It follows, therefore, that all those persons, who having been validly married, afterwards obtain a civil divorce and enter into new marriage arrangements, are barred from ever contracting a valid marriage between them on account of the diriment impediment *criminis adulterii.* It is hardly necessary to add that one or both parties to the adultery must be validly baptized, otherwise no impediment is incurred, as the impediment of crime is of

ecclesiastical origin. It suffices that one of the parties be baptized, for the baptized person communicates his inability to marry to the unbaptized person, *propter unitatem contractus.*

Bertha and Sempronius cannot be married in the Church, unless a dispensation from the diriment impediment of the crime of adultery be first procured. If the civil marriage contracted by Bertha and Sempronius was before a non-Catholic minister, Bertha is excommunicate and requires a second dispensation. The same holds good if the civil marriage was contracted before a justice of the peace. Thirdly, if Sempronius was never validly baptized, a dispensation *super impedimento disparitatis cultus* is necessary; otherwise a dispensation from ***mixed religion*** will be necessary to make the marriage licit.

XVI. CHRISTIAN BURIAL OF MASONS

John was married outside the Church. His wife and children were Protestants. For years he did not practise his religion. When sick, a priest from a religious community was called, who heard his confession, gave him holy Viaticum and sent for the sick man's parish priest to administer Extreme Unction and to look after him in the future. Two or three months later, the sick man dies. It was arranged to have the funeral from the church; but in the death notice of an evening paper the parish priest learns that the man belonged to the Masons.

1. Must a Mason, repenting on his death-bed, give up all his paraphernalia, and make a written public statement that he renounces the lodge?

2. Was the confessor obliged to notify the parish priest of this fact?

3. Did the parish priest do right in burying this man from the church?

Answer.—In order to absolve a dying Mason, the theologians generally require that the dying Mason shall break off all communication with the Masons and that he shall hand in his formal resignation to the master of his lodge. It is never lawful for a confessor to absolve a Mason, as long as the Mason is resolved to frequent the lodge. This view is held on the authority of the Congregation of the Inquisition, which, when asked about a case like this, answered, July 5, 1837; "Juxta exposita, non licere." In some circumstances, it is even required that the Mason desiring absolution

shall show a written document from the master of the lodge, acknowledging the receipt of his resignation. "Immo pro diversis adjunctis aliquando exigitur, ut exhibeatur scriptum praefecti hujus sectae, quo acceptae hujus declarationis authenticum detur testimonium." (Lehmkuhl, II, 1226).

It is generally admitted, however, that this withdrawal from the Masons may be deferred for a time, *abrupta omni communicatione, atque pecuniae contributione,* for very grave reasons, such as for instance, the fear of being killed or something equivalent. In this case he may defer handing in his resignation, provided that in the meantime he suffer no spiritual loss and render no aid to the lodge, and remove whatever scandal his connection with the Masons may occasion. This is gathered from the response of the Holy Office, March 7, 1883. A money loss would not be a sufficient cause for deferring one's withdrawal. We must call attention here to an answer of the Holy Office, January 18, 1896, regarding the three orders, *viz.;* Odd Fellows, Knights of Pythias and Sons of Temperance. With regard to these three orders, the Holy Office has decided that if immediate resignation from any of these three orders would involve a serious money loss; *i. e.,* of life insurance, then the resignation may be postponed, provided *ut interim a quavis sectae communione et a quovis interventu, etiam materiali, abstineatur.* In these three orders the loss incurred by immediate withdrawal would be a *money* loss; therefore not even *material* communion with the order is allowed. The loss or damage which immediate withdrawal from the Masons contemplates is *death* or something equivalent, and therefore *material* cooperation for a time or indefinitely may be justified. As such danger does not threaten in the United States, it can scarcely be urged as a reason for deferring one's resignation from the Masons.

The faculties which the Holy See grants to American bishops and through them to American priests, to absolve Masons desiring to return to the Church, have certain restrictions. 1. The penitent must resign from his lodge and must forswear the Masons. As said above, it is not always necessary that this resignation should be in writing or be publicly known. Questioned on this point, the Holy Office answered, Aug. 5, 1898, "ut sectam saltem coram confessario ejurent, seu detestentur, reparato scandalo eo meliori modo, quo fieri potest."

2. That the penitent hand over to the confessor who will forward them to the ordinary, all books, documents and regalia having relation to the order. If this is impossible, the penitent himself must destroy them.

3. The penitent must make known to the ordinary of the diocese the secret leaders and officers of the sect. Where the officers are publicly known, as in the United States, this third clause does not oblige.

The case. 1. Must a Mason, repenting on his death-bed, give up all his paraphernalia and make public a written statement that he renounced the lodge? Under ordinary circumstances, the penitent must, as said above, hand in to the master of the lodge his written resignation, and should show to the confessor a written receipt or acknowledgment of the receipt of the same from the lodge master. (Lehmkuhl, II, 1226; Genicot, II, 597, etc.) If by doing so he should place his life in jeopardy or expose himself to some other equally grave harm, then he may be excused from doing so, provided he breaks off all intercourse with the lodge and discontinues all payments of dues, etc. In the case submitted, there can scarcely be said to be any such danger in resigning from the lodge, and therefore the penitent should have sent in his written resignation. There

is no obligation to make public such resignation, as the fact that the man gets the Sacraments is sufficient evidence of it. Also he should have handed over to the confessor his books, etc., dealing with masonic matters. All this the parish priest must suppose that the confessor looked after, and therefore it did not concern the parish priest.

2. Was the confessor obliged to notify the parish priest that he had attended to these matters? Strictly speaking, he was not. It might have been better had he done so, with the permission of the penitent, but *de jure* all that the confessor was obliged to do was to say to the parish priest, that the man had received the Sacrament of Penance and the holy Vaticum. The confessor must be supposed *de jure* to have done everything that the law of the Church requires before he absolved the man.

3. Did the priest do right by burying the man from the church? We think he did. What we do not quite understand is, how the parish priest, after giving the dying man Extreme Unction, did not see, or at least seems not to have seen or visited, him again up to the time of his death, two or three months later. Still, if the parish priest had no conclusive evidence that the penitent after receiving the last Sacraments, had renewed his affiliation with the Masons, he was justified in burying him from the church.

XVII. THE MARRIAGE IMPEDIMENT OF ERROR

George married Emma, because he thought she had considerable money, and that she was a good woman and of real refinement. George was a Catholic and Emma was a Methodist. They were married by the Methodist minister. This happened before the *Ne temere* decree went into force at Easter, 1908. After the marriage, George discovered that Emma had no means of any kind, and that she was an adventuress and a woman of very loose life. As soon as he discovered this he left her, and she went off with another man. George sued for, and obtained, a divorce in the civil court. He now wishes to have the Church annul this marriage. His grounds are that he was completely deceived by this woman, that he thought he was marrying a wholly different person and that he never would have married her had he not been thoroughly deceived as to who and what she was. Moreover, there is no evidence that she was ever baptized. She was more a nominal Methodist than anything else. Is there any hope that the Church might annul this marriage?

Answer:—Before discussing this case, we must explain briefly in what the impediment of error consists, in as far as it acts as a destructive bar to a valid marriage. In the *Corpus Juris Canonici,* Gratian says, in his decree:

"Non omnis error consensum excludit, sed error alius est *personae,* alius *fortunae,* alius *conditionis,* alius *qualitatis.* Error *personae* quando hic putatur esse Virgilius, et est Plato. Error *fortunae* est, quando hic putatur dives qui est pauper. Error *conditionis* quando putatur esse liber, qui est servus. Error *qualitatis* quando putatur esse bonus qui est malus. Error *fortunae* et *qualitatis* conjugii consensum non excludit. Error

vero *personae* et *conditionis* conjugii consensum non admittit" (c. 29, q. 1).

In Canon Law, by the *condition* of a person is meant, not a person's social, financial or moral condition, but whether a person is a freeman or a slave. Again the Canon Law distinguishes two kinds of error, as affecting marriage: *Error juris, i. e.,* when one is in error or mistaken concerning the essential qualities of marriage, its indissolubility, fidelity, unity, etc.; and *error facti,* when one is mistaken concerning a person's social, moral or financial position. In the case here submitted, it is evident that we have to do with an *error of fact.* George was mistaken concerning Emma's moral and financial condition, that is, about her *qualities.* Now an error of fact, concerning a person's qualities, diriments marriage in three cases:

1. If one marry a slave, thinking she is a free woman;

2. If the condition is made a part of the contract, and that expressly; *v. g.,* if George says expressly: "I marry Emma only on the condition that she is a good woman or a rich woman";

3. When the error concerning another's qualities affects that individual's person, *redundat in personam; v. g.,* a man wants to marry the oldest daughter of a family, but not knowing her personally, he marries this woman here present, believing her to be the oldest daughter.

In these three cases, the error is said to be a substantial error of fact, and diriments the marriage. All other mistakes or errors concerning a person's qualities or condition do not diriment a subsequent marriage, because they do not affect the substance of the marriage contract, but are considered a side-issue. They render the consent given in the marriage more easy, more prompt, but they are not the cause of the consent, or rather the consent is not

primarily concerned with them, but with the substance of the marriage contract, and only secondarily with them. In our case, if George had known, when he married Emma, that she was a bad woman, he never would have married her. Granted. But that intention is only an interpretative intention, that is, if George had known, he would not have married. An interpretative intention is no intention. The only intention George had, as a matter of fact, when he married Emma, was to marry Emma. The Church could, if she wished, make such deception as practised by Emma a diriment impediment. The civil law voids many contracts, when procured by fraud. But the Church expressly abstains from doing so, in order not to open the door wide to much litigation and to endless doubts and dissensions.

The case. George's error concerning Emma's qualities when he married her in no wise affects the validity of his marriage. Many similar cases have been referred to the Holy See, and the invariable answer has been: *valet matrimonium.* What was George's chief and principal purpose when he accompanied Emma to the Methodist church? To contract a valid marriage with her. That he thought she was rich and good was quite a secondary consideration, a minor issue, in no way affecting or interfering with his main purpose, to wed Emma. If he had known the truth, he would have done otherwise. Certainly he would. But as a matter of fact he did not know the truth, and *de facto,* he had no intention of doing otherwise. There was no *error personae vel conditionis;* there was only an *error fortunae et qualitatis.* And that kind of an error does not diriment marriage.

As far as any error was concerned, therefore, there is practically no hope that the Church will declare George's marriage to Emma null and void.

As regards an annulment on the grounds that Emma was unbaptized at the time of her marriage, and therefore was barred from a valid marriage with George, *propter disparitatem cultus,* they having obtained no dispensation, there is little prospect that an annulment would be granted on that score. If it could be proven beyond doubt, that Emma had never been baptized, then, of course, the marriage is null and void from the beginning. But after a marriage, that is never presumed or taken for granted. On the contrary, every such marriage will be held to be valid, until, *de facto,* it is proven, beyond reasonable doubt, that it was invalid. And in this connection, it must be observed, that what would be considered "beyond reasonable doubt" by our civil courts, would not be considered so, always, by the Church. In these matters, the Church has her own standards, which, particularly in this matter, differ considerably from the standards followed by our civil law courts. If Emma belonged to a sect that did not believe in baptism nor practise it, she would naturally have to be considered unbaptized. But she was a member, and evidently born and brought up in a sect that believes in and practises baptism, and therefore *post factum,* that is after her marriage, and in order precisely, to make the marriage valid, Emma will be looked upon by the Church authorities as having been validly baptized in the Methodist Church and therefore validly, although illicitly, married to George, and there is no hope of an annulment on this ground either, unless more evidence be produced, to prove beyond reasonable doubt that Emma was never validly baptized. As far as a new marriage is concerned, in the Catholic Church, George will have to wait until Emma dies, or else produce evidence, sufficient in the eyes of the Church, to prove that Emma, at the time of her marriage to him, was unbaptized.

XVIII. WHAT RISK MUST A PRIEST TAKE TO GIVE THE LAST SACRAMENTS?

Are all priests bound, even at the risk of their lives, to hear the confessions of the dying, and to administer to them the Holy Viaticum and Extreme Unction?

What is the nature and extent of this obligation?

Answer. We must distinguish between priests who are charged with the cure of souls, and priests who are not so charged. Among the priests who are charged with the cure of souls are to be numbered all bishops, pastors and curates, in regard to those who are immediately subject to their jurisdiction. The bishop who has a diocese, whether he be the ordinary, coadjutor or assistant bishop, is responsible for the salvation of all the souls committed to his care. The pastor of a parish and his assistants are responsible for the salvation of the souls of the parish. A bishop who has no diocese and a priest who has no parish, who have no souls committed to their care for whose salvation they are responsible, are known as *sacerdotes simplices;* they are not bound in the same degree as pastors of souls, to risk their lives for the salvation of others. Among pastors of souls must be numbered also, the superiors of religious houses in regard to those under them; the chaplains of convents, hospitals and asylums, in regard to the inmates of such institutions.

Now it can be held as a general principle, that all priests who are charged with the cure of souls, are bound, under pain of mortal sin, to succor all those committed to their care and to administer to them the last Sacraments whenever such souls are in grave need,

in gravi necessitate, of the last Sacraments. Priests who are not charged with the cure of souls are not bound to give the last Sacraments to the dying, except the dying be in extreme need, *in extrema necessitate,* of the Sacraments; that is, unless the priest comes to their assistance, the dying man or woman will surely lose salvation.

The parish priest, therefore, and his assistants are bound, even at the risk of their lives:

1. To hear the confessions of the dying, unless they are sure that the dying man is in the state of grace. Even though the pastor or curate be sure that he himself will die as a result of hearing the dying man's confession, nevertheless he must hear the confession.

2. According to some of the great theologians, for instance, Suarez, Sylvius, etc., a parish priest, or any priest charged with the cure of souls, is bound to risk his life to administer the Holy Viaticum to his subjects, even though they have made their confession and are in the state of grace. Only in case of *sure* death to the parish priest, or very serious damage to the community at large, would these theologians excuse a priest from administering Holy Viaticum to the dying. (Suarez, III, disp. 44, §3. Sylvius, supp. q. 32, Art. 3.)

Suarez says:

"In hoc Sacramento, datur quaedam necessitas moralis, vel quia auxilium quod per tale Sacramentum datur, moraliter necessarium censetur ad perseverandum in justitia per poenitentiam recuperata, et vincendas tentationes illo tempore occurrentes, vel etiam quia potest aliquando conferre gratiam primam quam imperfecta poenitentia prius non contulit. Quibus etiam accedit fructus essentialis ipsius Viatici, qui magni momenti est, et praeferendus multis incommodis temporalibus. Ex quibus omnibus simul sumptis et prudenter

consideratis, exurgit quaedam necessitas, quae licit not sit extrema, videtur tamen esse valde gravis."

St. Alfonsus calls this view of Suarez, *valde gravem.* Other theologians, however, deny the weight of the reasons brought forward by Suarez, and maintain that there is no *grave* obligation to administer *Viaticum in articulo mortis* at the risk of one's life. St. Alfonsus calls their opinion very probable. In response to the prayers of St. Charles Borromaeo, Archbishop of Milan, Gregory XIII., 1576, declared that the parish priests of Milan and their curates, and others having the cure of souls in that diocese, were not obliged *sub gravi* to administer to those infected with the plague any other Sacraments than those necessary for salvation, namely, Baptism and Penance.

Fagnani says that this declaration of the Congregation of the Council to St. Charles was never published; but later on, when a decision of St. Antoninus, Archbishop of Florence, 1459, was found, requiring pastors to administer the Sacraments, the question was again submitted to the Holy See. The Holy See, after consulting the Congregation of the Council, decided that no general rule should be made in the matter, but that a letter should be sent to St. Charles, stating that during the plague pastors were obliged, in conscience, to remain at their posts and to administer Baptism and Penance to the parishioners. The Holy See approved of this letter to St. Charles Borromaeo, December 8, 1576.

Pope Benedict XIV. says that it can not be surely established that these letters to St. Charles were ever countersigned in Rome or ever forwarded to St. Charles, since there is no record of them to be found in Rome or Milan, and that therefore no valid argument can be deduced from them.

3. There is no grave obligation for a parish priest to administer

Extreme Unction to the dying, if by so doing he should seriously risk his life. The reason is, because Extreme Unction is not necessary for salvation and it is generally given only after the Sacraments of Penance and Viaticum have been administered; that is to say, only after the dying man's salvation has been made morally certain. Fr. Konings, however, well remarks that if the dying man had not been to confession for a long time, and was absolved only conditionally because he is unconscious, there would be a grave obligation in that case to give Extreme Unction, because it might be necessary for salvation, since Extreme Unction, *per se, secundario,* gives sanctifying grace to those who have only attrition for their sins, and who can not now make a confession.

We come now to the second question: What obligation have priests, who have no cure of souls, to risk their lives in the administration of the Holy Viaticum and Extreme Unction? They are under no grave obligation to do so. Some have even gone so far as to say that such priests could never be held *sub gravi* to administer even the Sacrament of Penance, since the dying man can, strictly speaking, help himself, if he be in mortal sin, by making an act of perfect contrition. But it is truer to say that whenever it is likely that the dying man is in mortal sin, and there is no likelihood that, if left to himself, he will make an act of perfect contrition, then the *simplex sacredos,* who is not charged with the cure of souls, is bound *sub mortali* to risk his life to hear the dying man's confession, since the latter is then truly *constitutus in extrema necessitate spirituali* and we must succor him even at the sacrifice of our life. The same must be said in regard to the administration of Extreme Unction, in cases where the dying are pretty surely in mortal sin and are unable to make any kind of a confession.

As regards the nature of this obligation, in the case of those having the cure of souls, it is an obligation of justice, which they contract *ipso facto* when they assume the office of parish priest, and obtain their living thereby. The obligation resting on a *simplex sacerdos* to hear the confession of or anoint the dying, is an obligation of charity, for by charity we are bound to succor our neighbor in great need, especially if the need be in the spiritual order. Both these obligations are of a grave character, binding under pain of mortal sin.

We have treated this question from a standpoint of what is rigorously, *sub mortali,* required by strict justice or charity. We should blush to think that there were any Catholic priests who would measure their efforts for the salvation of souls by the requirements of strict justice and not by the claims of love that we owe the little ones of Christ.

XIX. A PASTOR'S JURISDICTION REGARDING MARRIAGE.

John and Mary wish to be married. They were both born and brought up in the same parish in Brooklyn, where their parents still reside. For the last two years, John and Mary have been employed in the same hotel in New York and have lived there. They have rented an apartment in New York, close to the hotel where they are employed, and have fitted it up, preparatory to living there after their marriage. Now they both desire very much to be married in their home parish in Brooklyn. Is it necessary for them to get the permission of the pastor of the parish in New York, where the hotel is situated, where they are employed, and where they have lived for two years and expect to live permanently after their marriage? Or, may they be married in their home parish in Brooklyn, without any permission from the New York pastor?

Answer. According to the former law John and Mary could be married in their home parish in Brooklyn, without any permission from the pastor in New York, in whose parish they have been working for the last two years, and where they intend to locate permanently, as soon as they are married. That is to say, they may do so, if after coming of age, or being quite independent of their parents, they did not formally give up the home of their parents and acquire a new home, strictly speaking, somewhere else. Children did not lose their right to the home of their parents, unless of their own free will, being *sui juris,* they either formally or legally renounce it, or acquire a new domicile, within the meaning of the Canon Law, somewhere else. The parish of the parents of John

and Mary, in Brooklyn, is, properly or canonically speaking, the parish of John and Mary, as long as they do not renounce it or abandon it, or acquire a new canonical domicile in another parish.

Once John and Mary are married, they necessarily become *sui juris,* and when they set up an establishment of their own in New York, they necessarily lose their domicile in Brooklyn. It is a common axiom of the Canon Law, that servants acquire only a quasi-domicile in the parish of their employer, and that they do not forfeit their rights to the domicile of their parents by acquiring a quasi-domicile in the parish of the parties who employ them.

As soon as children are of age, or *sui juris,* as the Canon Law has it, they may, if they wish, renounce the home of their parents.

They may do this either formally, that is, by an explicit and formal renunciation of their parents' home, or they may do it constructively, by acquiring a home, or legal domicile, somewhere else. But in either case it is necessary:

1. That the children be *sui juris,* that is, legally competent to care and answer for themselves; if only one be *sui juris,* the one who is not *sui juris* retains the home of the parents as a domicile;

2. That the renunciation of the parents' home be formal and explicit, which will be the case, if the children formally give up for good the home of their parents, or if they establish a new home for themselves elsewhere, and thereby forfeit their rights to the home of their parents, as a legal domicile.

It cannot be held in Canon Law that there has been a formal renunciation by children of the domicile of their parents by the mere fact that the children have left the home of their parents

to work elsewhere, even though the children have no intention or do not think of returning home in the event that they should give up their work or employment.

Nor can it be maintained that John and Mary, by hiring and furnishing an apartment in New York, to be occupied by them after their marriage, thereby acquired a canonical domicile in New York.

To rent a house, or even to buy a house, with the intention of living in it, is not sufficient to acquire a domicile, as such an act does not, of itself, include an intention of permanently living in the house or acquiring a domicile there. To acquire a legal, canonical residence, it is necessary, not only to hire or buy a house or apartment, but also actually to live in it and to intend to live in it long enough to acquire a legal residence.

That John and Mary lived in the hotel in New York where they were employed, did not give them a true domicile there, but only a quasi-domicile. Now a *quasi-domicilium* does not destroy a real canonical residence which John and Mary have in the home of their parents in Brooklyn. The only way that John and Mary could have acquired a legal domicile in the New York parish, within whose limits the hotel is situated, where they are employed, would have been to have renounced their claims to their parents' home in Brooklyn and taken up their permanent residence in New York with the intention of settling there for good, they both being of such age and condition as would render them competent, in the eyes of the Canon Law, to do so. That they had such an intention or were so minded is a fact that the law does not presume, but requires to be proved. From the moment that it could be proved, *in foro externo,* that John and

Mary had given explicit expression to their will and purpose to abandon their domicile in their parents' home in Brooklyn and acquire a true domicile in New York, from that moment, the argument drawn from the fact that service in New York gave them only a quasi-domicile in New York, and left them a real domicile still in their parents' home in Brooklyn, would fall to the ground. The fact that they are employed in New York, and that their condition is one of servants, *conditio famulatus,* would not prevent them from acquiring a real domicile in New York.

Therefore, in the case as submitted, it was lawful for John and Mary to get married in their home parish in Brooklyn, and no permission for this is required from the New York pastor in whose parish is located the hotel where John and Mary are employed, if the case is judged according to the former law.

According to the new Code the parties seem to have lost the domicile of their parents for the fact that they work so near to the home of their parents and yet board by themselves in New York seems, under ordinary circumstances, sufficient proof that they have left the domicile of their parents.

The new Code in Canon 93 rules that a person under twenty-one years of age necessarily shares the domicile of the one in whose charge he is, parent or guardian, but he may at the same time also have a quasi-domicile which consists of actual residence in a place with the intention of staying the greater part of the year or having actually stayed over half a year in a place. Canon 92. The domicile of any person of age is lost by leaving said domicile with the intention not to return there any more. Canon 95. If the parties in this case were of age and had left the house of their parents with the intention not to take up their residence any more in their parents' house, they have lost the domicile and cannot claim the pastor of their parents as their own. This is clear from the Canons quoted which do not demand a formal renunciation of the domicile.

XX. THE NUMBER OF SINS CAUSED BY ENVY

Mary and Anna had conceived a mortal grudge for each other. It grew out of envy and jealousy. For a long time they kept it in check, as far as any public outward manifestation of it was concerned. However, one Sunday, as they were both leaving the church, they met, and immediately began to abuse and vilify each other, before all the people, and finally came to blows. Of course it caused a scandal and everyone was greatly shocked.

How many sins did these two women commit, both as regards the kind and the number of the sins?

Answer. There can be no doubt but that these two women sinned against the love they owed each other. Envy and jealousy are sins against charity. Charity is a virtue that disposes one to love one's neighbor, to wish one's neighbor well, and to do him good. Envy is a feeling or sentiment of grief or discontent and uneasiness at the sight of another's excellence or good fortune, coupled with a certain degree of hatred or dislike (*odium inimicitiae*) for such a person, and a desire to possess equal advantages. Envy and jealousy are directly opposed to charity and are therefore sinful. Now since Mary and Anna both harbored, for a long time, feelings of envy and jealousy, these sins of envy and jealousy must have been multiplied many times, since they were *peccata mere interna,* or sins of the heart, or of the will. These internal sins, or sins of the heart, are said to be multiplied as often as the evil feeling or desire is expressly or tacitly retracted and again revived and consented to. In fact, it may be said that internal sins, or sins of the heart are multi-

plied as often as they are physically interrupted, no matter even if the interruption be involuntary. In this way sins of the heart are multiplied as often as they are physically interrupted, no matter from what cause, so that there will be as many sins numerically, as there are interruptions. An exception is made for the case where many acts are prompted by the same burst of passion; in that case the several actions, following quickly upon one another, are united or rather unified by the one cause from which they proceed, namely the same outburst of passion. But now, ordinarily speaking, no outburst of passion lasts more than two or three hours at most, and therefore Mary and Anna must have multiplied their internal sins of envy and jealousy, at least several times a day. In practice, however, it will suffice if these women indicate the length of time that they indulged these sinful feelings against one another. For instance, it will be sufficient if they confess to having harbored sentiments of envy or hatred or jealousy for one month, or two months, etc. For by so doing, they make it sufficiently clear to the confessor, just about what is the number of these sins that they committed. Besides, it would scarcely be possible to be more exact or explicit in matters of this kind. The Council of Trent says that mortal sins must be confessed, according to kind and number, *prout sunt in conscientia,* at the time of confession. It is the conscience of the sinner that eventually must number his sins or keep count of them. But, usually, the sinner is ignorant of those theological distinctions, regarding number and kind and the method of distinguishing them. These rules must be applied to the sinner according to his special circumstances. We take it for granted that these two women had no intention from the beginning of making any external demonstration or of coming to blows. Therefore

as often as they desisted from these thoughts of envy and hatred, they multiplied these sins numerically. Did they intend from the beginning to come to blows, an interval of time would be required to multiply *actus internos cum proposito externam actionem ponendi.*

So much for the internal sins of the heart that Mary and Anna committed by envy and jealousy. Let us take up the sins of act, or the external sins that Mary and Anna committed on that Sunday morning, when with much mutual abuse and vilification and many imprecations, they engaged in a physical encounter before the whole congregation. How many different sins did they commit on this occasion? Sins, of course, of action, external sins. Were they many in number and many in kind?

They seem to have committed only one sin against charity, by anger. St. Thomas says that sins of the tongue are multiplied according to kind or species, not by reason of the things that are said, but rather by reason of the purpose for which they are said.

"Species peccati oris magis attenditur ex fine, quam ex materiali objecto." (2-2 q. 74, a. 2.)

In the case before us, the abuse and imprecations and maledictions, all proceed from the same outburst of passion, from the same explosion of anger and hatred, and are all meant, not as so many separate and formal evils which they mutually call down upon one another's head, but rather as evil in general which they wish one another, not attending to the particular kinds of evil that their words imply, and they constitute one act along with the physical act of beating one another, which is the principal act. Whilst, therefore, physically speaking, all these different acts of abuse and contumely and physical encounter, constitute separate physical acts; nevertheless, morally taken, they form but one act, containing but one kind of moral malice. If these women belong

to the rank and file of the community, there will be no question of loss of honor or defamation, because the spectators do not believe what these hurl at one another, knowing that it is said in the heat of passion, etc.

But did they not give grave scandal to the community by such conduct on Sunday, in the sight of the whole parish?

If there were non-Catholics in the community, who witnessed this scene, or who learned of it immediately, with all its disgusting details, of course there would be given serious scandal. For such conduct necessarily leads the non-Catholic to despise the Catholic religion. But if there were only Catholics present, or in the community, then we should have to consider whether they would be led into sin by such a scene. Scandal is not necessarily given because a sin is committed before others. A sin committed before others is scandalous only when it will very probably lead the others into sin also. The sinful action may shock others or outrage their feelings, but as long as it does not lead them into sin, it is not scandalous. Now a community of Catholics might witness such a scene as the above, and never be led into any sin by it. In that case no scandal is given. They might feel bad about it and shocked and humiliated, but they would not be scandalized.

To sum up therefore, Mary and Anna, by harboring ill will and envy and hatred toward one another, committed a grave sin against charity, and they multiplied their sin several times daily, all during the time that they entertained the grudge for one another.

Secondly, when they came to blows, they committed a new sin against charity, with which the abusive language and epithets, that immediately preceeded it, constitute one moral act. This

they will sufficiently confess by saying that they quarreled and came to blows.

The various evils that they wished each other, did not constitue a new kind of sin, nor was there any defamation of character or grave scandal.

XXI. EXECUTING THE PROVISIONS OF A WILL

Titius, being seriously ill and having no near relatives, made a will and left all that he possessed to Cajus, a priest, and an intimate friend of his for many years. Titius, however, added certain provisions to his will, which he required Cajus to fulfill. First of all, Cajus was to say one hundred Masses for the repose of Titius' soul. Secondly, Cajus was to give one thousand dollars to a certain orphan asylum. Lastly, Titius had made a vow to make a pilgrimage to the shrine of Our Lady of Martyrs at Auriesville and to present to the shrine a gold chalice to be used on the altar of the shrine, and as he had not fulfilled this vow, he required Cajus to make the pilgrimage in his name and to make the offering of the gold chalice. After Titius' death, Cajus faithfully executed these provisions of the will, except the one regarding the pilgrimage and the chalice. With regard to these Cajus claimed that as they were vows, they were something personal to Titius and binding only on Titius, and did not descend with the inheritance, and therefore could not be binding on him, as Titius' heir. Was Cajus right, or should he have also fulfilled the provisions of Titius' will regarding the pilgrimage to Auriesville and the gift of a gold chalice?

Answer. Cajus did not do right in not making the pilgrimage and presenting the gold chalice to the shrine. Cajus' reasoning that as vows are personal, they bind only the person making them and do not descend with the inheritance, does not apply to his case. His reasoning is partly false, and what is right in it, does not apply to his case. He should have fulfilled the last provisions of Titius' will, in the same manner that he fulfilled the others. Titius' vow to make the pilgrimage and to present a gold chalice to the shrine at

Auriesville was a mixed vow, *votum mixtum,* part of it being *real,* and part *personal.* The *personal* part of the vow was the pilgrimage to Auriesville. That is called the *pars personalis* of the vow. The *pars realis* or *real* part of the vow, was the presentation of a gold chalice to the shrine. Now as regards this latter part of the vow, the *pars realis,* the offering of the gold chalice in this instance, there is no doubt in theology but that *vota realia* do descend to the heirs and are to be executed by the heirs, strictly and in justice, in as far as the estate of the deceased testator will allow of. This is the uniform teaching of theologians and canonists. The reason of it is plain. Real vows, *vota realia,* that is, vows to make donations or to turn over property, etc., adhere to the property or temporal goods and chattels of the person making the vow, and therefore if such vows are not fulfilled before the death of the person making them, they adhere to the inheritance, and with it they descend to the heirs as a real obligation affecting the property of the testator, and are to be fulfilled by the heirs, in strict justice, as for value received by virtue of an implicit contract. By accepting, of his own free will, the inheritance, the heir accepts voluntarily not only the advantages and emoluments of the descended estate, but also its debts and obligations. It is simply a case of the bitter going with the sweet. Therefore, Cajus, being the universal heir of Titius, that is, inheriting all of Titius' property, and of his own free will accepting the same, becomes liable in conscience for all the *real* debts and obligations attaching to the inheritance; therefore, for the presentation of a gold chalice to the shrine of Our Lady at Auriesville. Indeed, Cajus would be bound to make this gift to Auriesville, even though Titius had made no provision for it in his will, or even though Titius had freed Cajus from the obligation. Because just as Titius could not liberate himself from his vow, once he had made it, so neither

could he liberate his estate from the obligation of fulfilling it, nor could he prevent it from passing to his heirs along with his estate. It was just as real as any other debt incumbent on his property, and must be paid out of the estate, by the heirs, if the estate be sufficient.

In regard to the pilgrimage that Titius had vowed to make to Auriesville and required in his will that Cajus, his heir, make it for him, and in his name, it seems to us that Cajus is bound in conscience to make it, just as he is bound in conscience to make the gift of the gold chalice, but not precisely for the same reason. Theologians are agreed, indeed, that personal vows, and such was Titius' vow to make a pilgrimage to Auriesville, do not attach the property or estate of the person making them, but only affect his person. They leave the inheritance intact and do not descend with it to the heirs. On this point there is no disagreement. Nevertheless, in the case before us, Titius constituted Cajus his universal heir on condition or with the understanding that Cajus would fulfill his vow in as far as it was personal also; that is to say, that Cajus would make the pilgrimage for Titius. This was sufficient to bind Cajus' conscience, because Cajus was a voluntary heir, and was not obliged to accept the inheritance if he were not so disposed. In accepting the inheritance of his own free will and volition, he accepted implicitly the conditions on which it descended to him. While in a general or broad sense, it may be true that one person may not bind another person by a vow that is personal, nevertheless it is certain that a testator who bequeaths his property, to which he holds title in fee simple, to another, may add a proviso and burden the heir with the obligation of doing something, in such manner that if the heir refuse to fulfill the obligation by doing the thing required, he shall not receive the inheritance. Since,

therefore, Cajus, of his own free will, elected to accept the inheritance left him by Titius, and since Titius constituted him his heir to fulfill also the personal part of his vow, i. e., the pilgrimage, we do not see how Cajus can be excused, once he accepts the inheritance, from making the pilgrimage to Auriesville.

XXII. DOES THE EFFECT OF EXTREME UNCTION REVIVE?

If Extreme Unction fails to produce its effect at the moment of reception, owing to the lack of the proper dispositions in the recipient, does it revive later on, when the sick person supplies the necessary dispositions? The case is this: Titius was injured and rendered unconscious by an explosion in a trench where he was working. While unconscious he was annointed. When he recovered consciousness, he confessed that he was in mortal sin at the time of the accident, but was hit so suddenly that he had no time to think of anything and had not made an act of contrition. If he makes an act of contrition now, will he receive the grace of Extreme Unction, or must he be annointed again?

Answer. Catholic theology teaches that the Sacraments, when validly administered, give grace to the recipient, unless the recipient places an obstacle in the way of grace. *Non ponenti obicem sacramenta dant gratiam.* The *obex* or obstacle which may impede the conferring of grace, is the lack of disposition in the recipient. It is the sacramental rite that is the *cause* of the grace. And the sacramental rite, when valid, will produce grace in the soul, unless the soul's lack of disposition prevents it. The soul's disposition is a *conditio sine qua non.* When the recipient of a Sacrament is not rightly disposed to receive it, he is said to place an obstacle, an *obex,* in the way of the Sacrament. The lack of disposition can never prevent the Sacrament from impressing its *indelible character* on the soul. The lack of disposition does, however, prevent the

Sacraments from conferring grace. When it is said that the Sacraments revive, *sacramenta reviviscere,* it is meant that the Sacraments, later on, when the necessary dispositions are present, confer the same grace, which they would have conferred at the moment of their reception, had the recipient been rightly disposed. To remove the obstacle to a Sacrament is nothing else than to arouse the necessary dispositions, the absence of which prevented the Sacrament, when it was conferred, from producing its grace in the soul. It is evident that the necessary dispositions for the licit reception of a Sacrament may be lacking either through the fault of the recipient, or without his fault. For instance, a penitent may not have attrition for his sins at the moment when the priest absolves him, and this may happen either known or unknown to himself. In either case the Sacrament does not remit his sins, owing to the obstacle, *i. e.,* lack of attrition, which he himself, either knowingly or unknowingly, places in its way.

There is no intrinsic difficulty, arising from the nature of the Sacraments, why they should not revive, once the obstacle in their way is removed. Every Sacrament, validly conferred, gives grace, or at least gives the right to grace, for every Sacrament, validly conferred, produces its own peculiar effect, unless it is prevented from doing so by the recipient's lack of disposition.

The difficulty about the reviviscence of the Sacraments arises from the difficulty of knowing positively whether Christ instituted the Sacraments so that they would revive. And concerning this question there is a great variety of opinion among the theologians. Some theologians maintain that only Baptism, if received with an *obex,* revives when the obstacle is removed. Other writers maintain that all the Sacraments revive. And finally, others hold that some of the Sacraments revive, while others do not. It is

theologically *certain* that Baptism does revive, when the obstacle is removed. If this were not so, then many persons who receive Baptism without the proper dispositions, would be deprived, through the course of their lives, of the graces necessary to salvation.

It is very probable that the Sacraments of Confirmation and Holy Orders also revive. For, like Baptism, they also imprint a character on the soul, and it is forbidden to repeat them, once they have been validly conferred. If they did not revive, *remoto obice,* many persons would have to go through life lacking the special graces altogether necessary for their state.

As regards the Holy Eucharist and Penance, there cannot be urged the same reasons as for the other Sacraments, and therefore it is very doubtful whether, if received with an obstacle, they revive when the obstacle is removed. As they may be received or repeated every day, it is more than probable that they do not revive. However, it is not certain. The Sacrament of Marriage probably revives, because it may not be repeated or renewed during the lifetime of either party to it. There remains now only Extreme Unction. It is only probable that Extreme Unction revives once the *obex* to its effect is removed. The reason why theologians think that it may revive is this: Extreme Unction produces very special effects; it confers very special graces, very necessary to the sick person; it may not be repeated during the same sickness. Now if it did not revive when the *obex* is removed and the necessary dispositions are present, the sick person, who through his own fault or without any fault of his own, had received Extreme Unction without the right dispositions, would be deprived all through his sickness of the graces of Extreme Unction, nor would there be any way of supplying them. As it is difficult to defend such a position, theologians are inclined to think that

Extreme Unction, if received by the indisposed, revives or gives grace later on whenever the sick person becomes rightly disposed. This, however, is not certain, but only probable.

Now it may be asked, if the Sacraments do not actually confer grace, owing to the lack of disposition on the part of the recipient, what must the recipient do to induce the right dispositions? Must he go to Confession and receive Absolution, or must he make an act of perfect contrition or will attrition suffice? To answer this question, it is necessary to distinguish between the Sacraments of the living and the Sacraments of the dead. If a person received the Sacraments of the living without being rightly disposed, that is, without being in the state of grace, then later on the state of grace can only be acquired by perfect contrition or by attrition and sacramental absolution. As soon as the state of grace is thus acquired, the obstacle is removed, which was the lack of grace, and the Sacrament produces its effect. This is true of all the Sacraments of the living, *except Extreme Unction.* In this matter, Extreme Unction is classed with the Sacraments of the dead.

In the case of the Sacraments of the dead, all that is required to remove the *obex,* and to induce the right disposition so that the Sacrament may produce its grace in the soul, is an act of attrition or imperfect contrition, *unless a sacrilege was committed in the reception of the Sacrament, or a mortal sin after its reception;* in this latter case, perfect contrition is necessary to induce the state of grace and thus remove the *obex,* or at least attrition with sacramental absolution. That is to say, sacramental confession and absolution are necessary, if possible, in the latter case, but perfect contrition, which includes a *votum sacramenti,* will suffice, where it is impossible to go to Confession.

The case. When Titius received Extreme Unction he was in the state of mortal sin. That state was the *obex* to the Sacrament. It had to be removed before the Extreme Unction could produce its own peculiar graces in his soul. As Titius' reception of Extreme Unction was not sacrilegious and as he committed no mortal sin after its reception, then as soon as Titius makes an act of attrition, the Extreme Unction which he received while unconscious will produce its grace in his soul, even to the remission of his mortal sins committed before the reception of Extreme Unction, in case Titius cannot go to Confession to be absolved, and in case he does not make an act of perfect contrition. For this is peculiar to the Sacrament of Extreme Unction, that it has been instituted to give *per se* the *primam gratiam* to those who make an act of *attrition,* if in mortal sin, and who cannot make a Sacramental Confession. If Titius had only venial sins on his soul when annointed and had no attrition for them, then they would not be remitted by the Extreme Unction until such time as Titius elicited an act of imperfect contrition or attrition. Under no circumstances is it lawful to re-annoint Titius at this time.

XXIII. SERVILE WORK ON SUNDAY

James is a cigar maker and has a little business of his own. He is accustomed, on Sundays, after going to Mass, to spend five or six hours in his shop, making cigars. He does not give any scandal because no one knows it. He does it, he says, in order to escape from idleness, and besides, it seems to him much better to be engaged in some decent work at home, than to spend the time loafing around, or in saloons. Are his reasons sufficient to justify him?

Answer. The following are the chief kinds of work that are permitted on Sundays:

1. Works demanded by our own personal need or the need of our neighbor;
2. Works in the direct service of religion;
3. Works of charity, care and nursing of the sick, burying the dead;
4. Works permitted by custom, as cooking, sweeping the house, etc.;
5. Works permitted by dispensation obtained from legitimate authority.

Now it is very evident that the work done by this cigar maker does not come under any of the heads of this category. Therefore it is work that may not lawfully be done on Sunday, except for other reasons than those advanced by James.

James says that he works on Sundays in order to shun idleness. But this is not a sufficient excuse, because there are other and lawful ways of shunning idleness on Sundays, such as praying,

meditating, attending vespers and benediction of the Blessed Sacrament, reading good literature, etc. There are authorities that permit servile work on Sundays simply as a means of shunning idleness, if there were good reason to fear that idleness, in this instance, would lead one into sin. But St. Alfonsus thinks that even in such a case, servile work would be permitted only if it were the only means of conquering the temptation to sin. Certainly this cannot be said of this cigar maker. In fact, it would be very rare that it could be said of anybody.

The other excuse that James gives for working on Sunday is equally untenable. He says it is better to be decently employed at home on Sundays, than to be idling about or drinking and gambling in the saloons. It certainly is better, or at least less sinful. But it is not necessary to do either. It is lawful to choose the lesser evil, when that is the only way of escaping the greater evil. But this is not true of James. He does not have to make cigars on Sunday in order to keep out of the saloons. If this were the only means for James to keep out of the saloons, he would be allowed to use it. And in a particular case, it might be. But it is not true of James. He has other and lawful means at hand to escape idleness and the saloons.

Speaking in the abstract, therefore, we would say that this cigar maker, by engaging in servile labor on Sundays, without a valid reason and for a considerable time, that is for longer than two hours, commits a mortal sin, because he violates the commandment to sanctify the Lord's day, in a serious manner and without a justifying reason or excuse. And even though he works only an hour now and again during the day, if all the time he works, when added together, amounts to considerably more than two hours, then he commits a grievous sin, because the work thus

done on Sundays, even though interruptedly, coalesces, as the theologians say.

We say, theoretically speaking, James commits a grievous sin. Practically, we think that for the want of sufficient knowledge, James did not commit a grievous sin. He acted in good faith, believing honestly that he had ample justification for working as he did on Sundays. But once he is instructed regarding his case, if he nevertheless continues to engage in this labor on Sundays, we do not see how he can be excused from mortal sin. Still, even then, James' own peculiar mental character must be taken into account, before a just decision can be reached.

XXIV. THE RITE OF THE NUPTIAL BLESSING

What are the special rites, prescribed by the Roman Missal, to be observed in giving the nuptial blessing to the bridal pair during the Nuptial Mass?

Answer. 1. During the Nuptial Mass, the bridal pair should be seated some place near the Altar, in *loco honestiori propius ad Altare,* and while the priest is saying the *Pater noster* in the Mass, they should leave their place and approach the Altar, where they remain kneeling.

2. When the *Pater Noster* is finished, the clerk answers *Sed libera nos a malo,* and the priest, having said *Amen,* genuflects and retires to the Epistle side of the Altar, where he turns around toward the bridal pair, who are kneeling before him, and with hands joined, he reads from the Missal, which the clerk has taken from the Altar and holds before him, the two prayers: *Oremus, Propitiare, Dme., etc.,* and *Oremus, Deus qui potestate virtutis, etc.* When he pronounces the words *Jesum Christum* in concluding these prayers, he bows his head profoundly toward the Sacred Host, reposing on the Altar. As soon as the celebrant has finished these two prayers, the bridal pair return to their places, and the celebrant, turning toward the middle of the Altar and genuflecting, purifies the paten and continues the Mass.

3. After the priest has consumed the precious Blood, he gives Holy Communion to the bridal pair, observing the customary rite. By a decree of the Congregation of Rites, March 21, 1874, the nuptial blessing may be given in the Mass, even though the bridal

couple do not receive Holy Communion during the Mass. The Sacred Congregation, however, admonishes the pastors to exhort the faithful who are about to be married, that they approach Holy Communion during the Mass in which they receive the nuptial blessing.

4. As soon as the Post Communions have been said, the bridal pair again approach the Altar and remain kneeling before it. The celebrant says *Benedicamus Dmo.* or *Ite Missa est,* according to the Mass of the day, and then turns or remains turned toward the bridal party, and reads the prayer from the Missal, which the clerk has again taken from the Altar and holds before him: *Deus Abraham, Deus Isaac, etc.,* with his hands joined before him and bowing his head profoundly at the name *Jesu Christo.*

After this, says the Missal, let the priest admonish the pair *"sermone gravi, ut sibi invicem servent fidem: orationis tempore, et praesertim jejuniorem ac solemnitatum, casti maneant: et vir uxorem, atque uxor virum diligat: et in timore Dei permaneant."* Then the priest takes the aspersorium and sprinkles the bridal pair with holy water *"in medio, a dextris ipsorum et a sinistris, nihil interim dicens."*

5. After this, the bridal couple return to their seats, and the priest, turning to the Altar, says the *Placeat* and gives the blessing as usual, and finishes the Mass.

XXV. A CASE OF CONSCIENCE REGARDING CONFESSIO EXTERNA FIDEI

A young man, brought up as a Protestant, has for some time been convinced that the Catholic is the only true Church. He resolves accordingly to enter it, but there are serious difficulties in his way. He lives with his parents, who are strict Protestants, and the least hint of his intention would at once arouse their anger; it would be impossible for him to continue to live peaceably in his parents' house; he would have to hear all manner of bitter remarks and finally would be compelled to quit his home. He will not be in a position to support himself for about three years; after that time he will be free from his parents' authority and able to take the important step openly. Being perplexed as to how to act, he succeeds in having a private conversation with the local Catholic priest, to whom he reveals his difficulties. The priest, as is his duty, has recourse to the Bishop. How will the latter decide the case?

The question is this: Is the young man bound to confess his faith in spite of all obstacles, and publicly to be received into the Catholic Church, or may the Bishop allow him to be received secretly, and to keep the fact of his conversion concealed until he can leave his father's house?

Against an affirmative answer may be quoted our Lord's words: "*Qui confitebitur me coram hominibus, confitebor et ego eum coram Patre meo*" (Matth. x, 32); and also the threat: "*Qui me erubuerit et meos sermones, hunc Filius hominis erubescet, cum*

venerit in majestate sua" (Luke ix, 26). To obtain a just appreciation of these severe words, we must notice the contrasting clause, added by our Lord Himself. To the words, *" Qui confitebitur me,"* etc., the contrasting clause is not: *" Qui me confessus non fuerit,"* etc., as it is with reference to faith: *" Qui non crediderit, condemnabitur,"* but it is: *" Qui negaverit me," " Qui me erubuerit."* Christ shows us plainly in this way that it is not permissible positively to deny His name and doctrine, and that false shame is no sufficient reason for a man's concealing his faith.

After setting aside this objection, we may adduce the following principle in support of an affirmative answer: *Praecepta affirmativa obligant semper, sed non pro semper,* or *Praecepta affirmativa non obligant ad semper, sed certis duntaxat temporibus agendum.* The *Confessio externa fidei* is precisely a *praeceptum affirmativum.* It is, moreover, a generally accepted doctrine that weighty reasons, such as the certainty of incurring serious injury, relieve us from the duty of obeying laws that are not absolutely necessary to our salvation. The *Confessio externa fidei* is a law of this kind. It is permissible to conceal our religious convictions, where neither the honor of God, nor our own salvation, nor our neighbor's welfare, require us to reveal them, provided that we have good reasons for keeping them secret.

In the case under consideration a *Confessio externa* does not affect the honor of God nor the welfare of a neighbor. The young man's own salvation might be imperiled in his present circumstances, as, should it be made his duty to proclaim his faith, he might put off his conversion, and possibly never be converted.

My conclusion is, therefore, that the Bishop can give the young man permission to be received into the Catholic Church secretly, and can at the same time dispense him from observing

the commandments of the Church, although he ought to hear Mass occasionally, when he is able to do so. He can easily receive the Sacraments secretly, in some other town for instance.

Another question arises in connection with this subject: What is the young man to do if his parents wish him to accompany them to a Protestant church? How is he to behave? If he cannot avoid yielding to their wishes or commands, he may go with them, but he must not take part in the singing or prayers of the service.

In support of the opinions expressed above, we may quote the following passage from St. Thomas Aquinas: "*Si turbatio infidelium oriatur ex confessione fidei manifesta, absque aliqua utilitate fidei vel fidelium, non est laudabile in tali casu fidem publice confiteri, unde Dominus dicit Matth.* vii: '*Nolite sanctum dare canibus, neque margaritas vestras spargere ante porcos, ne conversi disrumpant vos.*' *Sed si utilitas fidei aliqua speretur aut necessitas adsit, contempta perturbatione infidelium, debet homo publice fidem confiteri; unde Matth.* xv *dicitur, quod, cum discipuli dixissent Domino, quod Pharisaei audito ejus verbo scandalizati sunt, Dominus respondit: sinite illos, scilicet turbari, caeci sunt et duces caecorum*" (II.—II. qu. 3, a. 2, ad 3).—Professor Josef Aertnys, C.SS.R.

XXVI. IS IT A GRIEVOUS SIN FOR INNKEEPERS TO SUPPLY SPIRITUOUS LIQUORS TO CUSTOMERS WHO ARE DRINKING TO EXCESS OR WHO ARE ALREADY DRUNK?

An innkeeper is in the habit of serving every customer who asks for drink, even if he is plainly drinking too much or is already intoxicated. The man may be wasting on drink money that belongs to his wife and children, but the innkeeper pays no attention. Is not such behavior a grievous sin? And can an innkeeper receive absolution if he habitually acts thus and will not promise to alter?

A question of this kind touches one of the difficulties in Moral Theology. The point is whether and under what conditions it is permissible to connive at another's sin.

The doctrine of cooperation forms probably the most difficult part of practical moral theology. It is easy enough to say, as do the writers of most books on the subject, that formal cooperation is never permissible, but that material cooperation is allowed for comparatively important reasons. What is meant by formal and material cooperation? It is often difficult to distinguish them, and still more difficult to decide whether the existing reasons are sufficient to justify material cooperation. Lehmkuhl says (I. n. 648): "*Neque omnes difficultates in hac parte possunt solvi. Theologus principia tantum et regulas quasdam dare potest, quas in singulis casibus applicare practicae prudentiae agentis vel consulentis committere debet.*"

There can be no doubt that formal cooperation occurs whenever

an innkeeper invites or urges those already half or wholly intoxicated to go on drinking. Lehmkuhl says in this connection: "*Excitare ad largiorem potum certe intrinsęcus malum est*" (*Theol. mor.*, I. n. 403). Berardi writes (*Praxis confessariorum*, pag. 169, n. 786): "*Incitare ad ebrietatem praecise est intrinsece malum.*"

Let us imagine a case in which the innkeeper was aware that his customer intended to commit some great crime, possibly murder, and was drinking spirits in order to nerve himself for his task;—would it then not be permissible for the innkeeper to encourage him to go on drinking, until he was incapable of any action, and so was prevented from committing the intended crime? No, it would not be permissible, if such encouragement is a formal cooperation in the sin of intemperance, for formal cooperation is never allowed; it is *intrinsece* evil, so that we must apply to it the Apostle's words (Rom. iii, 8): "*Non faciamus mala, ut veniant bona.*" St. Augustine lays down this principle very clearly in his work *contra mendacium* (c. 20, n. 40): "*Etiam ad sempiternam salutem nullus ducendus est opitulante mendacio.*" The end can never justify bad means, means recognized as bad.

To prove how difficult it often is to distinguish formal from material cooperation, we may refer to the debated question, whether it is right to encourage some one to commit a sin, in order to deter him from committing some more grievous offense, which he is on the point of doing. This question bears a close resemblance to the one under discussion. St. Alphonsus (*Theol. mor.*, lib. 3, tract. 3, n. 57) considers the theory that it is right "*probabilior*," giving as his reason that in such a case the lesser sin is no longer an evil but a good action, being less bad (*suadens non quaerit malum, sed bonum, scilicet electionem minoris mali*).

Following this line of argument, some writers maintain that it is right to advise a man to drink too much in order to preserve him from immorality. Schwane, however, in his *Moraltheologie* (Part 1, § 47, p. 147), says: "A lesser sin may be called a lesser evil, but not a good thing, and not a moral advantage, which is the point to be proved. It is always forbidden to cooperate in any sin by counsel. Other theologians, such as Laymann, Gury, Collet, etc., state the matter more precisely, and say that it is permissible to advise a man to commit a lesser sin in order to prevent his sinning more grievously, if the lesser sin forms a part of the greater. For instance, it is permissible to say to one about to commit a murder: 'Stop, do not kill him, only wound him.' By saying this, we should not give any formal cooperation to the sin, but we should only be preventing its complete committal."

To return, therefore, to our original question: An innkeeper might set some strong wine before that particular customer, foreseeing that he would get drunk, yet not urging him to drink it. Setting wine before him is only a material cooperation in the sin of *ebrietas* and is permissible for relatively important reasons. The wish to prevent the intended crime is certainly a sufficient reason for allowing the sin of drunkenness. Lehmkuhl says (*Theol. mor.*, I. n. 744): "*Aliquem ad ebrietatem inducere, etiam quae illi formalis est, licebit probabiliter ex eo fine eoque solo, ut idem ipse a majore peccato, ad quod determinatus est, impediatur, v. g. ab homicidio.*"

Let us now ask: May the innkeeper supply spirituous liquors to his customers at their request, when he sees that they are drinking to excess?

In this case, too, the cooperation in the sin is only material, and is therefore permissible for relatively important reasons. We

ought therefore to examine the reasons, and see whether they are sufficient or not. If the innkeeper fears to refuse to serve his customers, lest they should use oaths and foul language, he may certainly choose the lesser of two evils, and tolerate their drunkenness in order to prevent blasphemy. Again, if he fears to refuse to serve them, because of great loss to himself, knowing that his profits will be greatly diminished, he is not bound to refuse to supply what is ordered. Berardi says (*l. c.*): *sufficit causa mediocriter gravis; qualis esset, si alias notabiliter laederentur (caupones) ex diminutione emptorum.*" St. Alphonsus writes (lib. 3, tract. 3, n. 70): "*Satis excusantur ob metum cujuscumque gravis damni.*" Lehmkuhl says (*l. c.* n. 673): "*Causa mediocriter gravis et requiri videtur et sufficere, ut excusatio a peccato adsit.*"

The innkeeper is bound not *ex justitia,* but *ex caritate,* to prevent his customers from committing the sin of intemperance. If charity be exclusively taken into consideration, the desire to avert some serious damage is enough to justify him in cooperating in another's sin by good or indifferent actions,—in this case by supplying the drink that is ordered. It cannot be laid down as a general rule that innkeepers ought to refuse to serve such customers, since a rule of this kind would certainly inflict great loss upon them in their business. In special cases, however, it is undoubtedly an innkeeper's duty to refuse to supply any more drink to a man *ebrietati proximus,* when such a refusal would not cause him any serious loss. Berardi says (*l. c.*): "*Solum motivum lucri (quia scilicet talis vel talis ebriosus vini petiti pretium solvit) non sufficit.*"

The expression "belonging to their wives and children" is probably not to be taken in the literal sense that the drunkard pays his reckoning with money that is not his own. If this were the meaning, the question would require special discussion. It

most likely means that he wastes on drink what should be the family income, and reduces himself and his relations to poverty and want. In this case the innkeeper is not bound by justice, but only by charity, to avert ruin and want from the family. Although he is bound only by charity, it is clear that in such a case it is his duty to put up with considerable *incommodum,* and that he ought to have very strong reasons to justify him in supplying such drunkards with spirituous liquors when they order them in excess.

We have, finally, to notice the case where there are other inns in the neighborhood in which the innkeepers will not hesitate to supply a customer, so that a refusal on the part of one to serve him will not keep him sober. On this subject we may quote Schwane, who says in his *Speciale Moraltheologie* (Part 1, § 48, n. 3): "Occasionally a decisive importance is ascribed to the circumstance that the action in question is the *conditio sine qua non* of another's sin, in such a way that material cooperation is allowed when the sin will certainly be committed quite apart from it, but it is not allowed when the sin depends upon that action, and if there were no cooperation the sin would not be committed at all." This circumstance has certainly a bearing upon the imputation of cooperation, but not in such a degree as to render the cooperation permissible as soon as it ceases to be the *conditio sine qua non.* An innkeeper may foresee that a customer who is evidently drinking to excess will go elsewhere and obtain what he wants if he is not served in the house where he now is. This reason does not justify the innkeeper in cooperation, *i. e.,* in supplying spirits in excessive quantities—all that can be said is, that in cases where very probably a refusal on his part to sell would prevent the sin of drunkenness altogether, much stronger reasons are required to justify the sale than in other cases.

Enough has been said to enable us to see how an innkeeper ought to be dealt with in the confessional with regard to this point. The first thing to ascertain is whether he is in the habit of sinning grievously. If so, he must be admonished to be truly contrite for his sins, and to resolve firmly to avoid them in future. If he cannot be brought to these dispositions, absolution must of course be refused. The confessor must, however, be certain, as the result of his examination, that the penitent's action is really sinful.

We can only repeat what was stated above in words quoted from Lehmkuhl: Only general principles can be established: their application must be left to practical common-sense. An innkeeper with a prosperous business, who is respected in the neighborhood where he lives, can keep good order in a case of this kind far more easily than a poor rival, who is dependent upon the money that he takes each day. The former can say to his customer: "You have had enough for today, friend," without being obliged to fear lest he should give offense. A great deal depends upon the circumstances in a matter of this sort.

Other equally practical questions might be asked regarding innkeepers, *e. g.*, whether they may serve their customers with flesh meat on abstinence days, or supply certain newspapers, but we have restricted ourselves to the question that was actually asked.—Professor Josef Weiss.

XXVII. IS A MAN BOUND TO MAKE COMPENSATION FOR NOT HAVING PREVENTED SOME INJURY TO HIS NEIGHBOR?

Florian has a deep sandpit dug on his own land. He knows that a certain Andrew often passes that way at night, but does not draw his attention to the sandpit, or warn him to be careful where he walks. The result is that when Andrew again goes in that direction one night, unaware of the danger, he falls into the pit and breaks his leg, so that he cannot work for two or three months. Ought Florian to give him any compensation or not?

Answer.—In considering the question of personal injury, compensation has to be given only when the action causing the injury (1) is unjust (*contra jus strictum alterius*), (2) when it is also the actual cause of the injury (*causa damni efficax*), and (3) when it is also blameworthy from a theological or legal point of view.

Unless all these three conditions are fulfilled, no compensation is obligatory. We may here disregard the legal offense (*quam solummodo leges civiles imputant et cujus judicis sententia rei declaramur*).

If a person acts consistently within his own rights, and has no intention of injuring any one, although he may foresee that the other will suffer, he is not inflicting any real wrong upon him, for the principle holds good: *Qui jure suo utitur, neminem laedit.* He need therefore (*ex justitia*) give him no compensation, any more than a man need compensate his neighbor for diverting a stream of water that is injurious to his own land, though beneficial

to his neighbor's. The duty of paying compensation is binding only when there has been a violation of obligations of justice and not merely violations of the law of charity, so that it is possible for a man to sin grievously without being bound to make compensation; and this distinction should always be kept in view in order to avoid rigorism.

The case would be different if there were no good reason for the action, or if a man had no strict right to perform it. For instance, a man would sin against justice if he were to divert a stream that did him no harm and by altering its course harmed another person. Many circumstances have often to be taken into account when questions of this kind present themselves.

Supposing Florian had failed to warn Andrew through motives of hatred? The same answer is still applicable. He either had a right to dig the pit or he had none. In the latter case he wronged his neighbor and is bound to give him compensation, but not in the former. His bad intention does not affect this question, since it cannot make unjustifiable what was in itself justifiable. However, though Florian has not sinned against justice (and this is the point on which the question turns), because he has a right to dig a pit on his own land, he has sinned grievously against charity to his neighbor by failing to warn Andrew to take care where he walked.—Dr. Marcellin Jos. Schlager.

XXVIII. WHAT ARE THE OBLIGATIONS OF A PERSON WHO HAS DISPOSED OF AN ARTICLE THAT HE FOUND WITHOUT MAKING ANY ATTEMPT TO DISCOVER THE OWNER?

On the occasion of a numerous pilgrimage Gregory finds a bank-note near the church. The note has been trodden in the mud and is in a bad state, but not actually destroyed. He cleans it carefully and sees that it is a bill of ten dollars. Believing that it would be quite impossible to discover the owner, as an enormous crowd has assembled from all parts, he gives it to a ragged beggar near the church, thinking that in this way he is doing a good work, both on his own behalf and on that of the unknown owner. Upon returning to his home he hears that his neighbor's wife has lost a ten-dollar bill, but she does not know whether she dropped it on her way to church or whether some one in the crowd picked her pocket. Gregory says nothing about having found a bill, but hurries back to the church in hopes of meeting the beggar to whom he has given it, but though he does his best and makes many inquiries, he fails to discover him. Not being sure whether he is bound to compensate his neighbor's wife, he asks advice of his confessor. *Quid ad rem?*

I. If any one chances to find a thing that another person has lost, he should be guided by the following principles:

(a) The finder is not legally bound to pick up and carry away the thing found; without breaking any law he may leave it alone,

even at the risk of its being destroyed. Charity, however, may constrain him to take it away with him if he thinks that otherwise the owner will never recover possession of it.

(b) If the finder carries away what he has found, he incurs a legal obligation to take care of it and to preserve it. Moralists are unanimous in thinking that he makes a kind of contract—*negotiorum gestio*—with the owner, and is bound by the obligations that such a contract would naturally lay upon him.

(c) One of these obligations is that he must not keep the fact of his discovery secret, but must employ all suitable means of finding the owner, so that the latter may resume possession of his property. These means must be proportioned to the value of the thing found, and local customs and regulations must be observed. (Cf. Carrière, *de objecto justitiae,* pars I. cap. 4, art. 1, § 5).

II. Bearing these principles in mind, we may ask what opinion we should form of Gregory's action, and whether he has incurred any obligation to compensate his neighbor's wife for her loss.

(a) On finding the money he considered whether he might find the owner, but decided that this was morally impossible, owing to the great crowd of pilgrims. He had no wish to keep the money for himself, so gave it to a poor man, thinking that he was thus doing a good action.

Under the existing circumstances, might he not reasonably have hoped to succeed in restoring what he had found to its owner? Pruner's *Moraltheologie* (Part 3, div. 3, 2, § 4, II.) states that the hope of finding the owner is least in the case of articles bearing no distinctive marks, such as coins without a purse, paper money without a pocketbook, etc., especially if the circumstances of time and place afford no trace of the person who has lost them. All the factors mentioned by Pruner seem to be present in the case under

consideration. The note found by Gregory bore no mark showing to whom it belonged; thousands of people from various localities had passed over the spot where it lay, and if he had not happened to notice it and pick it up, it might have been trampled to pieces and have lost all value; possibly it had been for some considerable time lying in the dirt. All these facts might certainly lead Gregory to believe that it was useless to try to discover the owner.

(b) One point still remains to be discussed before a final decision can be given. It concerns the conscientious application of all the means of finding the owner which the value of the note furnished, and which a man's intelligence, the law, and local customs might suggest.

In spite of the fact that the circumstances mentioned above justified Gregory in thinking that it was useless to try to discover the owner, it was nevertheless his duty, considering the value of the note, to do what he could to find out to whom the money belonged before disposing of it by gift. This is an obligation of justice, laid upon the finder by the quasi-contract into which he enters by the appropriation of the thing found. Gregory could have complied with this obligation without any great difficulty; he might have put an advertisement in the newspaper, or have given notice to the police or the clergy at the place of pilgrimage. If he had done this, in all probability the woman would have recovered her money.

Is Gregory bound to make good her loss because he neglected this duty? His actions show that his failure to take any steps to find the owner of the note was not due to any malice, *i. e., sine dolo et culpa lata peccaminosa;* and for this reason he is free from any obligation to repay the money. There was no *dolus* in what he did, for in neglecting to make inquiries he had no wish to injure the owner by wilfully defrauding him. He had not therefore com-

mitted any *culpa lata* of a kind that would require him to make compensation. There was no punishable neglect in his omission to use due care in finding the owner; assuming that under the existing circumstances it would be impossible to discover to whom the note belonged, he did not even think of its being his duty to make inquiries. We have therefore here a *casus oblivionis vel inadvertentiae, "In quo casu pro damno rei alienae illato*—Lugo *de Justitia Disput.,* 8, n. 100–113—*citra culpam theologicam, saltem gravem, restitutionis obligatio nulla adest in foro conscientiae ante judicis sententiam."*

Culpa lata in contracts consists in failing to use ordinary care, which any other reasonable person would take of a thing, or in dealing with the affairs of others less carefully than with one's own. According to the divine law, a person is answerable for loss caused by *culpa lata* only if the action or the neglect indirectly causing the loss was rendered *really sinful* by the fact that the person in question foresaw the consequences of what he was doing, and nevertheless failed to choose another course of action. If, however, the *culpa lata* was a simple *culpa juridica,* to which no blame is attached *in foro interno, i. e.,* in one's conscience, there is no duty of indemnification to be considered. Cf. Pruner, *Moraltheologie,* Part 3, div. 3, 3, § 7, a and b; Gury *de Justitia,* no. 661, qu. 1; St. Liguori *de Justitia,* no. 554.

From what has been said, it appears that, on the one hand, Gregory had good reasons for assuming that it would be impossible to discover the owner of the money under existing circumstances, but that, on the other hand, he neglected *bona fide—citra culpam theologicam*—the duty of advertising what he had found, and making inquiries about the owner, since it did not occur to him to do so.

Consequently he is not bound to pay any compensation. Only *post factum* did he become aware that he ought not to have given the money away so promptly. He did his best to repair his mistake by going at once to look for the beggar, intending to give him some smaller sum in return for the note if he could recover it. He did not succeed in his attempt, and he is not bound to do anything further.—Dr. Adam Wiehe.

XXIX. REMEDIUM ILLICITUM

Venit quaedam ad confessarium atque inter alia confitetur, se permisisse aliquid inhonestum, sc. copulam, juveni, cui hoc remedium a medico ad sanandum morbum praescriptum fuerit. Quid dicendum?

Apparet statim, tale remedium esse omnino illicitum nec posse a medico praescribi nec ab aliquo adhiberi. Si igitur medicus illi juveni, cui impossibile esset matrimonium inire hoc injunxisset in morbo, juvenis debet sequi exemplum beati Casimiri Conf., de quo in Brev. (die 4 Martii) narratur: "Virginitatem sub extremo vitae termino fortiter asseruit, dum gravi pressus infirmitate mori potius, quam castitatis jacturam, ex medicorum consilio, subire constanter decrevit."

Ceterum hoc consilium medici videtur post-habendum esse, cum medici nunc temporis generatim tale remedium posse esse necessarium non concedant. Medio quidem aevo talis opinio vigebat, uti scriptores referunt, sed dimanaverat in scholas medicorum ex libris antiquorum ethnicorum et arabicorum medicorum; nunc iam sanior doctrina successit, uti satis apparet ex his, quae disputat cl. Stöhr (Pastoral-Medicin, IV. p. 262 et sqq.), *qui praeter alia dicit:* "If I add that the very physicians, who were so little concerned with Christian ethics that they believed themselves able to quench the fire of passion by means of the trivial drugs at their disposal, did not hesitate to recommend sexual intercourse as a remedy for various diseases, this fact alone is enough to reveal the true character of the cynicism that dominated medieval medicine."

XXX. THE SEAL OF THE CONFESSIONAL MUST BE OBSERVED EVEN IN THE CONFESSIONAL ITSELF

Uxor quaedam ejusque maritus apud eundem Confessarium peragunt confessionem paschalem. Mulier confitetur se adulterium commisisse et quidem instigante viro suo, nescio qua ratione ducto. Maritus statim post uxorem accedit, sed de hac re, de consilio nempe suo malitioso, prorsus nihil dicit.

The confessor is in a state of the greatest perplexity. On the one hand he knows from the answer to his question about the last confession that the *delictum* cannot have been the subject of a former confession, but, on the other hand, he knows how strictly binding is the seal of the confessional upon the confessor, and that it is absolutely wrong for him to make any use of knowledge derived from one person's confession in dealing with another penitent, although he may be aware of some sin committed by the latter. In this difficulty the confessor—whom we may call Fortunatus—suddenly remembers that he has read, in works on moral theology, that it is not to be regarded as a *fractio sigilli* if a confessor, hearing the confession of *sponsi* in such a case, supplements the deficiency by means of questions not likely to arouse suspicion. He asks his penitent therefore a few questions, such as, whether he has nothing more on his conscience, whether he has not cherished evil thoughts, whether he has not used improper language, whether he has been guilty of another's sin, whether he has advised any one to sin? Fortunatus dares not go further,

for the penitent answers each question with an emphatic "No," and declares that he has nothing more to confess. It seems incredible that the man can really have forgotten so serious an offense, and the priest finally comes to the conclusion that he is dealing with a thoroughly hardened sinner, and so, in order not to expose the Sacrament to frustration, he follows the advice given by St. Alphonsus, and says a *de profundis* over him, instead of giving him absolution, and dismisses him. Subsequently, however, very grave doubts arise in his mind, and he wonders whether he has acted rightly, and whether, by asking one or two more questions, he could not have made it easier for his unhappy penitent to confess his grievous offense. Fortunatus thinks that more judicious treatment on his part might have restored the grace of God and peace of mind to the man, and have saved him from the terrible sacrilege of making a bad Communion. Should he not have followed the advice of other theologians and have given him absolution at least *conditionatim?*

The question resolves itself into two points:

(1) Ought Fortunatus to have asked further questions of a more searching character?

(2) Did he act rightly in not giving absolution?

Answer.—(1) Fortunatus should be troubled not because he has asked too few questions, but rather because he has asked too many. He certainly went too far in asking the penitent whether he had been guilty of another's sin, and whether he had advised any one to sin. These two questions could be asked *citra suspicionem* only in the case when a confessor, owing to the incompleteness of a confession made to him, takes *all* the commandments singly and questions the penitent with regard to each separately. In the form and order in which Fortunatus asked the questions, the last at least

is decidedly objectionable and is equivalent to an indirect *laesio sigilli.*

The reference to the questions that may in a similar case be asked of *sponsi* is not to the point. The case is not similar. In that of *sponsi* the questions are such as do not imperil the *sigillum,* because they relate to sins *quae apud sponsos contingere solent.* The confessor may then ask plainly about sins *de sexto,* though he must of course do so discreetly. But in the case under discussion the sin is not one of those *quae apud sponsos contingere solent,* and it would never have occurred to Fortunatus to ask such a question unless he had previously heard the confession of the accomplice. By asking it, he may very probably have aroused in his penitent, especially if the latter was wilfully silent regarding his sins (as Fortunatus believed), the suspicion that the priest was asking these questions because of something heard in the preceding confession.

(2) In my opinion Fortunatus committed a still more serious mistake in not giving absolution. St. Alphonsus advised confessors to substitute some prayer for the formula of absolution, in the case of a sinner who had not the proper dispositions, and to whom it was impossible to explain why absolution was refused him. The Saint was referring to a case that might easily occur in confessions of *sponsi,* but his remarks apply only to instances in which the bad dispositions resulting from punishable silence are perfectly certain. Fortunatus cannot possess this certainty in the case under discussion, because, although the sin is in itself grievous, it is one committed by the tongue, and it may possibly have really been forgotten. We should remember how little attention is paid to sins of the tongue even by otherwise conscientious people. It is also conceivable that the penitent has some erroneous idea that

his evil suggestion was not particularly sinful, perhaps owing to *impotentia relativa propter imbecillitatem ex parte viri.* (Cf. Binder-Scheicher, *Eherecht,* p. 24, note 1.)

There may have been very little ground for his entertaining these doubts, or others like them; but still any one of them ought to have been enough to prevent Fortunatus from having recourse to the manner of refusing absolution that some theologians recommend. I say this the more emphatically because, even where the confessor is perfectly certain, in the above-mentioned circumstances, that there is *indispositio* on the part of the penitent, many approved authors are opposed to any refusal of absolution, and very good reasons for giving it can be brought forward.—Professor Johann Ackerl.

XXXI. THE ADMINISTRATION OF THE VIATICUM IN CASES OF CANCER OF THE ESOPHAGUS (GULLET)

In a certain hospital the last Sacraments have to be administered to two patients suffering from a malignant or cancerous growth in the esophagus. In the case of one the growth is situated at the opening of the esophagus into the stomach, so that, in the physician's opinion, the passage is completely closed, and the patient has to be fed artificially and cannot live more than a very short time. The question arises whether, under such circumstances, he is still able to receive the holy Eucharist sacramentally.

From the very nature of this most holy Sacrament it follows that, in order to produce the sacramental effect in the recipient, it must be received after the fashion of bodily food. In his Moral Theology, *de Eucharistia*, n. 226, on the mode of this reception, St. Alphonsus quotes Busenbaum's short text without entering into any discussion of the subject, and refers the reader to Bonacina. Busenbaum writes as follows: (1) "*Gratia datur in prima manducatione etiam primae partis, cum sit totum sacramentum: manducatio autem dicitur trajectio ex ore versus stomachum, etsi alii dicant, gratiam tum primum dari, cum pars aliqua est in stomachum recepta.*"

(2) "*Species non sunt retinendae in ore tamdiu, donec penitus pereant: quia tunc non manducaretur Christus, nec gratia sacramenti conferretur, uti nec si moriaris, dum hostia adhuc est in ore.*"

The passage in Bonacina to which St. Alphonsus refers is in *Disp.*

IV. *Quaest.* IV. P. II. n. 1: "*Eucharistia producit effectus, quando aliqua pars hostiae et sanguinis deglutita est, et pervenit ad ventriculum. Ratio est, tum quia, ut Eucharistia producat suum effectum, requiritur, ut applicetur suscipienti; dicitur autem applicata suscipienti, quando aliqua pars hostiae deglutita est, et transmissa est ad stomachum juxta illud Joann. 6. 'Qui manducat me, et ipse vivet propter me.' Tum quia hoc Sacramentum confert gratiam per modum nutrimenti; sed cibus nutrit, quando transmittitur ad stomachum: ergo Sacramentum Eucharistiae confert gratiam, quando transmittitur ad stomachum, in eo scilicet instanti, in quo verum est dicere, nunc deglutitum est, aut potatum est. Ita Sot. etc.—et alii communiter.*" This is Bonacina's opinion, and Capellmann adopts the same view, for he says in his *Pastoral-Medicin,* pp. 144, 145: "Circumstances may arise which render the absorption of food into the body difficult or even impossible. No matter what may be the obstacle, the administration of Holy Communion is possible as long as the sick person can swallow. If, however, he is unable to swallow, there can be no *manducatio,* and in such cases Communion cannot be administered even *in articulo mortis.*" Capellmann mentions (pp. 140, 141) an opinion expressed by von Olfers in his *Pastoral-Medicin,* and says: "Von Olfers argues logically that swallowing is essential to the conception of *manducare,* but he thinks it is enough to receive the Holy Eucharist into one's mouth, with the intention of assimilating it. I personally adhere to the old opinion, and believe that desecration of the Sacrament might easily result from the adoption of von Olfers' views." On p. 145 Capellmann again refers to the same subject, and says: "If von Olfers were right in his interpretation of *manducatio,* in cases where the sick person cannot swallow, it would be permissible to introduce a small particle into his mouth, and allow it to be gradu-

ally absorbed or eliminated subsequently with the saliva. I think, however, that, quite apart from the incompleteness of the assimilation, the reverence due to the Sacrament would be wanting."

Where it is a question of assuring the sacramental effects of the Holy Eucharist, we prefer the stricter view, *extra casum necessitatis,* and we regard it as important to take care that the particles for consecration are neither too small nor excessively thin, and that the sacred Host should not be kept too long in the mouth; yet *in casu necessitatis* for the benefit of a dying person we gladly accept the broader interpretation of *manducare,* if it is possible to claim on its behalf at least sufficient probability, in accordance with the general rules *de administratione Sacramentorum in casu necessitatis.*

In order to assure ourselves of this probability, let us bear the following points in mind:

(1) A patient, suffering from this disease, either vomits all the food that passes into the esophagus, and does so, as a rule, immediately after swallowing it, or he can retain a very minute quantity, such as a little water with a particle of a host. It is well therefore to experiment with an unconsecrated particle and water, or sugared water; if vomiting follows, it is of course impossible to administer the Viaticum.

(2) If vomiting does not follow, according to the testimony of experienced physicians the food may have come in contact with parts of the esophagus that are already dead, and decomposes mechanically without supplying any nourishment to the organism; or—and this seems more probable—it meets with parts of the esophagus that are still active, and undergoes a kind of assimilation, which can be regarded as to some extent equivalent to digestion and nutrition. If the tendency to vomit did not make it impossible to introduce sufficient nourishment into the esophagus, the patient

might be kept alive for some time in this way, as is not infrequently done in cases where the patient is fed through the rectum, although the food does not then reach the stomach.

(3) From what has been said we may draw the following conclusions:

(a) The sick man is able to receive Holy Communion in a way in which it very probably serves as nourishment, and thus the chief condition essential to its sacramental reception is fulfilled. "*Hoc Sacramentum confert gratiam per modum nutrimenti,*" Bonac. *l. c.* (b) The manner in which this divine food is assimilated by the patient does not appear to be opposed to the requirements of theologians: Busenbaum ap. St. Alph., "*gratia datur in prima manducatione, manducatio autem dicitur trajectio ex ore versus stomachum.*" (c) According to Olfers' opinion, to which reference has been made above, and which from the physiological point of view is very probably correct, the reception of the food into the oral cavity, and the change that it there undergoes, satisfy the conception of "*manducare.*" With still greater probability therefore may we regard the swallowing of the sacramental species, and the change that it undergoes in the lower part of the esophagus to be a "*manducatio*" sufficient to produce the sacramental effect. (d) Finally it may be pointed out that there is no other possible way of giving the sick man Holy Communion except by administering to him the *species panis.* It is absolutely forbidden to give him Communion *sub specie vini,* which might perhaps still reach the stomach. St. Alphonsus writes on this subject: "*Peccat (sacerdos) si morituro, qui ob linguae ariditatem non potest hostiam trajicere, det species vini, ut communissime dicunt, quia praeceptum viatici non obligat, quando nequit sumi debito modo et ecclesiae ritu,*" lib. VI. n. 245. Any artificial incorporation of the sacred

Host is equally inadmissible, and Capellmann is right in saying: "If it is impossible for the sick person to swallow, no *manducatio* can take place. It would be irreverent to introduce a particle of the sacred Host into the stomach through an esophageal sound or even through a gastric fistula."

To conclude therefore: It is still possible for the sick man in question to receive Holy Communion in a way which formally satisfies the requirements of the Church, and which very probably suffices to produce its sacramental effect: as he is in danger of death, it is his privilege and duty to receive Holy Viaticum, and the priest may give it to him, if he is otherwise in good disposition and there is no apparent danger of irreverence.

The second patient has a malignant tumor in the oral cavity, at the entrance to the esophagus, and the growth has become so large that any examination of it confirms the doctor's opinion that special manual dexterity is required, in order to insert some fluid nourishment into the esophagus in such a way that he can swallow it. As the chaplain of the hospital does not believe himself to possess this dexterity, he takes, when administering the Viaticum, a spoonful of water, places in it a particle of the sacred species, and hands it to the Sister, who is nursing the patient. She gives it to him so skilfully that he is able to swallow it down and it reaches his stomach.

The question here is: Did the priest act rightly in administering the Viaticum to this patient by means of a spoon, and through the agency of the Sister of Charity?

(1) As to using a spoon in administering Holy Communion, St. Alphonsus says that it may be done in two cases, *viz.*, with patients suffering from plague, to protect the priest from infection, and when a sick man is unable, owing to the dryness of his mouth, to swallow the sacred Host without wine or water, and he says that

although this opinion is contrary to that of several theologians, it is probably correct. Cf. *Theol. mor.*, lib. VI. n. 244, 6, and especially *Hom. Apost. Tract.*, XV. n. 12. We need not hesitate to extend this permission to the case under discussion, and therefore the chaplain cannot be blamed for using a spoon, as otherwise it would not have been possible to administer Holy Communion to this patient.

(2) We have next to consider whether he did right in handing the sacred Host to the Sister, for her to give it to the patient. Two prohibitions issued by the Church seem opposed to this course; laymen and clerics, who are not priests or deacons, are forbidden to touch the most holy Sacrament, and must not administer it to themselves or others. With reference to the first prohibition Marc, *Institutiones morales*, n. 1632, says: "*Si (vas sacrum) actu contineat Ss. Sacramentum, extra casum necessitatis seu periculum profanationis, nulli licet, citra culpam gravem, illud tangere, etiam mediate, praeterquam sacerdoti aut diacono. Ita communiter.* But, on the other hand, in justification of the chaplain's action, we may argue that, besides *periculum profanationis*, theologians admit of other *casus necessitatis* as exceptional cases when this prohibition must be disregarded. Such, for instance, is the *necessitas honestatis:* "*si hostia decidat super ubera mulieris, non debet sacerdos ipse auferre, sed mulier ipsa manu abstrahat et reponat in ciborio.*" S. Alph., lib. VI. n. 250. Schüch says, in his *Past.-Theol.*, § 280: "If a consecrated Host falls into a woman's clothing, or into any place where the priest cannot pick it up with decency, the woman herself must place it in her mouth, and afterwards wash her hands."

It seems, therefore, that the *necessitas viatici* is as weighty a reason, as this and other exceptional cases, for disregarding the prohibition and justifying the chaplain's action.

There is, however, another special instruction forbidding priests to entrust the administration of the Holy Eucharist to the laity (cf. c. *Pervenit 29. de consecr. dist. 2*), and some great theologians consider that it applies also to the *necessitas viatici.* But against this there are two arguments which may be adduced in support of the chaplain's opinion. In the first place the help given by the nun in this particular case can scarcely be regarded as an administration of Holy Communion. We have seen that a woman into whose clothes a consecrated Host has fallen is allowed to place it in her own mouth, instead of handing it to the priest and then receiving it from him. This proceeding is sanctioned by Schüch, and by Pope Benedict XIV, whom the author follows on this subject, but they cannot be said to have thus permitted a woman to administer Holy Communion. Even if, in the present case, the action of the nun is regarded as a real administration of the Viaticum, the priest, who commissioned her to act as she did, can appeal to the doctrine of St. Alphonsus, who asks (lib. VI. n. 237, III): "*an liceat laico in necessitate ministrare viaticum moribundo?*" and answers the question affirmatively, refuting the contrary opinion; although of course it is permissible only where it is impossible for a priest or deacon to administer it, and a layman can do so without giving scandal.

As in the present case the priest could either not have given the man the Viaticum at all, or could not have done so without great risk of irreverence, by causing him to vomit, the assistance of the nun was abundantly justified, although it would certainly have been grievously sinful under other circumstances; and the priest deserves nothing but praise for having made it possible for the sick man to receive the last Sacraments, and so to do his duty.—P. Johann Schwienbacher, C.SS.R.

XXXII. A QUESTIONABLE PENANCE

In imposing a penance a confessor ought to be careful not to tell children to do anything which motives of shame or shyness would easily prevent their doing, such as to beg pardon of parents or others. The infidel poet Alfieri in his *Memorie autobiografiche* says that, when he was seven or eight years old, he made his first confession to a Carmelite, who told him to throw himself down at his mother's feet just before dinner and publicly ask her to forgive him his faults. When the time came and all had assembled, he could not make up his mind to perform his penance or to utter a word, and so, as he says: "I conceived a violent hatred for that monk, and thenceforth had very little inclination to receive this Sacrament." This was the beginning of his godless life. Father Ballerini remarks regarding the imposition of such a penance: "*Imprudentiae istius fructum haud raro hunc reperies extitisse, ut pueri neque a confessario mutationem poenitentiae neque a parentibus sive aliis ausi veniam petere, multo minus deinde peccatum omissae poenitentiae confiteri audentes, confessionum sacrilegarum seriem inchoaverint et ad multos annos addita sacrilega communione protraxerint.*"

XXXIII. A "SALTED" GOLD MINE

The following case for consideration has been sent from South Africa:

A certain Solomon fancies that he has discovered a very rich gold mine, and in order to sell it more easily, and of course for a higher price, he "salts" it, as the saying is, *i. e.* he buries in his mine rich gold ore secured from other gold mines. Some capitalists test the mine, and, being highly satisfied with the result, they buy Solomon's land for an enormous price. A company is formed to work it, but the output does not come up to expectations; in fact, the mine does not even pay the cost of working it. Solomon declares that the mine was not worked properly, and that all sorts of unnecessary expenses were incurred; and this is undoubtedly true. It seems probable that under different circumstances the mine might have repaid the capital, with possibly five per cent interest. Is Solomon obliged to make restitution in full or in part? The question is one regarding the just price (*pretium justum*) of a thing. This can be regulated in various ways—by law (*legale*), by the general estimate of its value (*vulgare s. naturale*), by an agreement between buyer and seller in cases where the value cannot be otherwise ascertained (*conventionale*), and by bidding at a public auction (*concursu effectum*). The common price (*pretium vulgare*) seems fair if it corresponds to the thing's value, as usually estimated. As, however, people may judge very differently of the value of anything, we distinguish the highest, the average, and the lowest just prices (*pretium justum summum, medium, infimum*). Apart

from special circumstances, which we need not discuss here, anything may be sold fairly for the highest, average, or lowest just price. But a sin of injustice is committed if by deception or unfair trickery the highest just price is obtained from the buyer, or if any higher price is obtained than the buyer without that trickery would have paid.

We are now in a position to answer the question. Solomon asserts that with prudent management, and with care to avoid unnecessary expense, the capital might have been refunded and five per cent interest paid. This is merely a matter of probability, not of certainty. A *res existens in spe probabili* can be the subject of an agreement, and the probable profits can be assessed at a definite sum of money; but equity requires that the probable profits in an agreement shall be estimated lower than the certain profits. Even if the mine had really been as profitable as Solomon represented it to be, he deceived the purchasers by "salting" it, and so induced them to pay an enormous price for it. He is therefore bound to repay the amount by which his trickery augmented the price of the mine. He is not responsible for the loss incurred by the company by their unwise methods of exploitation and by their unnecessary expenditure, for, as matters stand, his dishonesty was not the efficient cause of this loss.—Dr. A. Goepfert.

XXXIV. NEVER REFUSE TO HEAR A CONFESSION

(1) A zealous priest told the following story: "I had been acting temporarily as parish priest in a very busy place. After six months the new pastor was appointed. He wrote to announce his arrival on a certain day, and I was naturally very busy on the eve of my departure. I had been in the confessional from an early hour until ten o'clock in the morning, and could only hear about half the people who were waiting, for I had to say good-bye to the school children, and was to take the Holy Sacrament to two sick people. I returned from my visit to them quite exhausted, long past dinner-time, and there were still many things that I had to arrange before starting the next day on my twelve hours' journey back to the town where I was assistant, and where a sick pastor was eagerly awaiting me. My time during the afternoon was constantly interrupted by visitors, who came to bid farewell and to bring me little tokens of their affection. Towards evening a perfect stranger came in and asked me to hear his confession. I begged him to put it off, saying that I was very tired and had hardly time to arrange for my departure. He insisted, however, and repeated his request, until I at last yielded to his importunity, though sorely against my will. His soul was burdened with many grievous sins and he had not been to confession for seven years. When he began his confession he said that God had inspired him with great confidence in me, and, if I had not heard him, he would probably not have gone to confession for a long time, but would have continued in his sinful career."

(2) Another priest, no less conscientious and zealous than the first, said: "One day I had been hearing confessions from early in the morning until noon, and was glad when I had given absolution to my last penitent. I went into the sacristy to make my *Gratiarum actio post missam,* for, two hours previously, I had interrupted the confessions in order to say Mass. I had just begun my thanksgiving, when a stranger came up to me and asked me to hear his confession. I was looking forward to being free to return to my comfortable room, and did not like being disturbed, so I asked the man rather roughly to what parish he belonged. He mentioned a parish in the neighborhood, so I told him to go to his own priest, for, our parish being very large, we had more than enough to do with our own people.

"During this short conversation I did not rise from the prie-dieu, for I wished to finish my thanksgiving and then go away. The man, however, remained standing beside me; and, as I prayed, the thought came into my mind that I resembled a Pharisee, who regarded it as a sin to omit or cut short a prayer, but was unwilling to do his neighbor a great service. This thought filled me with shame and made me more charitable. I rose from my knees and calmly invited the man to follow me to the confessional. His confession convinced me that he could not possibly have gone to his own parish priest, for it would have cost him an amount of heroism, of which he was scarcely capable, to force himself to do so."—Canon Anton Skocdopole.

XXXV. THE CONFESSION OF A WOMAN WHO HAS ON HER OWN AUTHORITY LEFT HER HUSBAND

Pius, a young confessor, is very zealous in hearing confessions, and as his piety and kindliness have won him general confidence, it often happens that penitents come to him from other parishes to ask his advice in their difficulties. He frequently has to deal with wives living apart from their husbands without the sanction of the Church.

Not long ago one woman confessed that she was not living with her husband, because he was an adulterer; another said she could not remain with her husband, because he ill-treated, abused and beat her, therefore she had left him.

The question arises: For what reasons may a wife leave her husband, and if she leaves him on her own authority, can she receive absolution?

Answer.—A wife may leave her husband *secundum jus publicum propria auctoritate,* if he has committed adultery, but she must be morally certain of his guilt, mere suspicion is not enough. St. Alphonsus says on this subject (*Th. mor.,* VI. 960): "*Certum est, virum posse dimittere uxorem adulteram, idem communiter dicunt doctores de viro adultero, quem uxor possit relinquere.*" The confessor ought to point out to her that it is her duty, if possible, to ask the ecclesiastical authorities to grant her a separation; if this be not possible she need not be disturbed. In the same way the wife may *probabilius* leave her husband *propria auctoritate,* if he

ill-treats her or beats her, and if delay might be dangerous, or if she does not bring her complaint before the ecclesiastical court, or cannot bring forward witnesses to her husband's ill-treatment.

St. Alphonsus says (VI. 971): "*An tunc possit recedere propria auctoritate? Affirmo, si periculum sit in mora, vel si non posset litigare, vel saevitiam probare.*" If, however, she is able to find witnesses to testify to her ill-treatment, and can bring her complaint before the ecclesiastical court, she should await its decision.

Theologians point out, however, that if there are real grounds for separation, and the wife acts *in bona fide,* and there is reason to fear that the information will do no good, then the confessor need not draw her attention to this duty. Scavini says (IV. 539): "*Si causae satis graves et canonicae existant, ut conjuges ab invicem separentur, juxta plures non essent inquietandi, si id agerent propria auctoritate scandalo et admiratione seclusa: nam pluribus nimis grave est quod judicialem sententiam cogantur provocare, saltem id tolerandum dicunt, si fiat ad tempus tantummodo.*" A remark made by the renowned Dr. Müller (III. 505) is also worth noticing: "*Nec inquietandos puto conjuges, qui civili tantum auctoritate sunt separati, si versentur in bona fide, vix enim erit fructus admonitionis sperandus.*"

From what has been said, therefore, it appears that Pius can absolve the penitents in question, if they are *bona fide,* or if they cannot easily bring forward a demand for separation.—Professor Franz Janis.

XXXVI. CASE OF A MARRIAGE RENDERED INVALID BY FAILURE TO APPLY FOR A DISPENSATION AT THE PROPER TIME

A week before her marriage with Titius, Bertha made a general confession in a monastic church. Her confessor discovered an *impedimentum dirimens,* viz., *affinitas ex copula illicita cum sponsi consanguineo in secundo gradu.* He pointed out this impediment to her marriage, and invited her to come to him again before it took place, in order that he might obtain authority to give her a dispensation. Bertha promised to come, but did not keep her word, and her confessor, Justinus, did not see her again until a fortnight after her wedding, when she apologized for not having come on the appointed day, because she had been prevented from doing so, and thought she could come later to receive her dispensation. Justinus was doubtful whether he could still make use of the authority asked and received three weeks before, but, having made up his mind, he told her that the dispensation was not valid, and, as her marriage was therefore null and void, he forbade her to live as a wife with her husband, until a fresh dispensation had been obtained and given to her.

The question arises: (1) Was Justinus right in declaring the first dispensation to be null and void? (2) Was he justified in forbidding Bertha to live with her husband?

Answer to (1).—The dispensation was given *in forma commissoria,* not *in forma gratiosa,* and the former removes the impediment only if it is given by the Commissarius to the person concerned.

The *impedimentum dirimens* existed therefore at the time when Bertha went through the form of marriage, and rendered it invalid. Justinus had authority to grant a dispensation from the impediment before the marriage; did he possess the same power after it had been solemnized? He concluded that he did not possess it, and we believe him to be right. The ordinary had authorized him to dispense *in ordine ad matrimonium contrahendum;* but *matrimonio contracto* the dispensation obtained by Justinus stands on a level with a *dispensatio subreptitia.* According to Laymann (*Theol. mor.,* lib. I. tract. IV. cap. xxii. n. 19) *rescripta gratiae subreptitia censentur, quaecunque per taciturnitatem veri per se intrinsece ad rem pertinentis impetrata fuerunt, si princeps veritate expressa atque intellecta probabiliter non concessisset dispensationem vel gratiam, vel certe tali forma et modo non concessisset sed cum adjuncta conditione et onere.* The *dispensatio super impedimentum affinitatis* is essentially different *matrimonio contracto* from what it is *ad matrimonium contrahendum.* The Council of Trent (*sess. 24 de reform. matr.,* cap 5) gave the following decision on this subject: *Si quis intra gradus prohibitos scienter matrimonium contrahere praesumerit, separatur et spe dispensationis consequendae careat. Idque in eo multo magis locum habeat, qui non tantum matrimonium contrahere sed etiam consummare ausus fuerit. Quodsi ignoranter id fecerit, si quidem solemnitates requisitas in contrahendo matrimonio neglexerit, eisdem subjiciatur poenis. Non enim dignus est, qui Ecclesiae benignitatem facile experiatur, cujus salubria praecepta temere contempsit. Si vero solemnitatibus adhibitis impedimentum aliquod postea subesse cognoscatur, cujus ille probabilem ignorantiam habuit, tum facilius cum eo et gratis dispensari poterit.*

To obtain a dispensation from the *impedimentum affinitatis* is therefore much more difficult after the marriage, though invalid, has

taken place than before. It is not granted in the same form or under the same conditions, and the things required of the persons dispensed are different. Therefore to regard a dispensation, granted *in ordine ad matrimonium contrahendum,* as applicable to a marriage that took place before the dispensation was granted, is a mistake; such a dispensation is equivalent to a *dispensatio subreptitia,* and, like it, has no force. If a dispensation is sought after a marriage has been invalidly concluded, and no mention is made of the fact that the marriage has already taken place, the dispensation, if granted, is invalid. The authority given to Justinus to grant a dispensation to his penitent, so that the marriage might take place, became invalid as soon as Bertha went through the marriage ceremony in spite of the diriment impediment.

In the instructions issued by the S. Congregation de Propag. Fide, May 9, 1877, a list is given of things that must be stated when application is made for a dispensation, "*ita ut si etiam ignoranter taceatur veritas aut narretur falsitas, dispensatio nulla efficatur*"; and amongst these things in no. 6 mention is made of "*variae circumstantiae, sc. an matrimonium sit contrahendum vel contractum; si jam contractum, aperiri debet, an bona fide saltem ex parte unius, vel cum scientia impedimenti . . .; si mala fide, saltem unius partis, seu cum scientia impedimenti.*"

Since, then, the dispensation is invalid, if, in the request for it, the fact that the marriage has already taken place is not mentioned, it follows *a pari* that a dispensation, granted *in ordine ad matrimonium contrahendum,* loses all value as soon as the marriage takes place in spite of the diriment impediment, which still exists, because the persons concerned have not received the dispensation.

It is not necessary to state whether the marriage between Bertha

and Titius has been consummated since Leo XIII promulgated the new regulation on June 25, 1885.

Answer to (2).—Justinus forbade his penitent, whose marriage was invalid, to live with her husband until the dispensation was procured and given to her. This was certainly the proper course for them to follow, if any excuse could be found for their separating temporarily. But it would very seldom happen that such a pretext could be found, especially in the case where the woman was the person affected. She would naturally return to her husband after making her confession, and would continue to live with him. To forbid her all conjugal intercourse with him might have most disastrous results. What ought a confessor to do under such circumstances?

Let us consider a somewhat similar case. If the man and woman are already in a church, and if everything connected with their marriage is prepared, so that their union cannot well be put off, St. Alphonsus (lib. VI. n. 613) considers that the priest may proceed with the ceremony, even though at that moment he discovers a diriment impediment. "*Quodsi nullo modo aliter vitari posset gravissimum periculum infamiae aut scandali, posset parochus vel alius confessarius declarare, quod lex impedimenti eo casu non obligat, quia . . . cessat lex, quando potius est nociva quam utilis. Et licet hic non cessat finis legis in communi, sed in particulari, cum tamen cesset finis legis in contrarium, lex etiam cessat, ut omnes conveniunt.*" (Cf. Salm. *de Leg.*, c. 4, n. 6.)

If the law is not to be regarded as binding in the case mentioned by St. Alphonsus, it was, *a fortiori,* not binding in this case, in which the difficulties, the *gravissimum periculum infamiae aut scandali,* were still greater. We think, therefore, that Justinus ought to have required Bertha at once in the confessional to renew

her *consensus in matrimonium cum Titio,* unless she was in a position to make some excuse for leaving her husband for a few days, to pay a visit to a friend, or something of the sort. She was *probabiliter* capable then of giving a valid consent to her marriage, *probabiliter* therefore on her part her marriage was duly concluded when the consent was renewed, and there is no need therefore to trouble her with regard to the *debitum.* If she were to question Justinus further on this point, he would have to say that she and her husband might thenceforth live as man and wife, but in all probability she would not ask anything of the kind, as ignorant people, of the class to which Bertha apparently belongs, do not regard conjugal intercourse, in such a case, as *fornicatio.* Justinus ought to have told her to come to confession again very soon. St. Alphonsus goes on to say (*l. c.*): "*Notant tamen auctores, quod . . . quantocius* (*saltem ad majorem securitatem et ad salvandam reverentiam legibus ecclesiae debitam*) *recurri debet ad S. Poenitentiariam, ut ab illa dispensatio obtineatur.*" Justinus should therefore at once apply to the *S. Poenitentiaria,* explaining all the circumstances and asking for a dispensation. After it is granted to Bertha, she must once more conditionally renew her consensus, as *probabiliter* the marriage can only now be concluded. Titius may be assumed to abide by his previously given consent, and as, in such a case, it would hardly be possible to tell him that his marriage was invalid, and to ask him to make a *renovatio consensus,* it is enough to secure the validity of the marriage if Bertha renews her consent, and Titius abides by his own, renewing it implicitly by proofs of conjugal love, many of which are enumerated by theologians.

It appears, from the form in which the dispensation is generally granted, that an agreement of this kind is not expedient if very

great difficulties would arrive in case the innocent party became aware of the impediment to the marriage. As a safeguard the following clause is added to the dispensation: *quodsi haec certioratio absque gravi periculo fieri nequeat, renovato consensu juxta regulas a probatis auctoribus traditas.* Justinus would adopt the best and safest course if he aimed at *sanatio in radice;* as Bertha knows of the impediment to her marriage, she must renew her consent at the *sanatio in radice;* for in this case, as Lehmkuhl points out, *non perfecta sanatio in radice est, sed solum alterius conjugis ignari consensus in radice sanatur* (P. II. n. 831; cf. n. 825 sqq.).— Dr. Huppert.

XXXVII. THE SEAL OF THE CONFESSIONAL

A hospital chaplain asks advice in the following circumstances: Many concubinarii are brought to our hospital, who, according to an excellent custom, are invited to make their confession and often do so. If they are seriously ill, we do our utmost to arouse in them true contrition and purpose of amendment. But sometimes they are not very ill, and the confessor learns only in the course of their confession that they are concubinarii; if they refuse altogether to abandon their sinful life, and will not even promise to avoid immorality, then he cannot of course give them absolution. In this case, how can he avoid breaking the seal of the confessional? Above the head of each patient hangs a card, so that the priest may see who has been recently admitted and whose confession he has to hear. If the patient makes his confession, the card remains hanging, to show who is to receive Holy Communion the next morning; it is removed after Communion has been given. If the patient makes no confession, the priest takes down the card. In the case that has been suggested, the nurse and all the other patients in the ward know that the priest has heard the sick man's confession. If he cannot give him absolution, and takes down the card, he betrays, out of confession, that the penitent has not been absolved; is this not a *fractio sigilli?* Is it correct to think that the patient has only himself to blame if he is not absolved, and this is betrayed by or inferred from the priest's behavior? Or is it correct to regard the confession as no real confession at all, because the penitent was not in the proper disposition and did not fulfil the required conditions?

If the priest tells the penitent that he cannot absolve him, but, in order not to break the seal of the confessional, he will give him his blessing and trust him to find some pretext for not receiving Holy Communion, he may be sure that the man will nevertheless communicate, and add sacrilege to his other sins.

Is the following a correct course of action? I tell the sick man that I cannot give him absolution, but he must pray to the Holy Ghost for light and make a better preparation; that I mean to stop his confession, remove the card, and tell the nurse, if she asks whether he is to receive Holy Communion, that he is going to make more preparation. Then I stand up, and do as I have said. Is there any *fractio sigilli* in this case? If so, how ought I to act?

The whole question turns on the seal of the confessional, which originates in sacramental confession, *i. e.*, in a confession made with a view to receiving sacramental absolution (*in ordine ad sacramentalem absolutionem*). A sacramental confession is not (1) a purely historical account of sins, such as any one might give in a confidential conversation with a priest, without any reference to the Sacrament of penance. Nor is it (2) a confession made with the intention of asking advice, with no desire to receive the Sacrament, although a priest would be bound to keep a *secretum naturale*. Nor is (3) a sacramental confession one made to deceive or mislead a confessor, or to obtain some advantage, or to comply with the orders of a superior, as if the penitent were to say: "I have not come to confess my sins, but because I want to have a certificate of confession to show my wife."

In such a case there is no seal of the confessional, nor need the priest give the man any certificate; yet, as a rule, he is bound to do nothing that would put him to shame, nor to seem in any way to have broken the seal of the confessional; for, by refusing a cer-

tificate, he might lead the people present to imagine that he did so because he could not give the man absolution.

A confession invalidated by some defect, by want of proper dispositions or by sacrilegious omission of some sin on the part of the penitent, or by absence of intention or jurisdiction on that of the confessor, is nevertheless sacramental. It is only when the penitent knowingly makes his confession to a layman, or to a priest not possessing proper faculties, that the confession becomes a matter merely of a *secretum naturale,* unless the penitent made his confession to a priest in order that the latter might obtain the necessary faculties and then give him absolution. Anything that, if made known, could bring odium upon the Sacrament or trouble the penitent, falls under the seal of the confessional.

The Lateran Council, IV. c. 21, says: "*Caveat autem omnino confessarius, ne verbo aut signo aut alio quovis modo aliquatenus prodat peccatorem.*" We must distinguish between a direct and an indirect violation of the seal of the confessional. A direct violation would take place if a priest expressly revealed anything learnt from the penitent under the seal of the confessional; an indirect, if he spoke in such a way as to lead others to think his knowledge was derived from the confessional, or if he suffered knowledge thus derived to influence his external behavior. Nothing but the penitent's express permission can release a priest from the seal of the confessional, and this permission avails only if it is given quite voluntarily and is not extorted by feelings of respect (*reverentia*).

If these principles be applied to the case under discussion, we must bear in mind the fact that the confession is sacramental, even if the penitent cannot be absolved, because of his want of contrition and purpose of amendment. Even if the patient goes to confession only because it is part of the regular routine of the hospital, his con-

fession is sacramental, unless he tells the priest plainly that he has no intention of making a real confession, but is pretending to do so, for the sake of appearances. The propounder of the question has not told us how the penitent received the confessor's proposal, and whether he agreed to it or not. If he did not expressly agree to it, there was an indirect violation of the seal of the confessional, because the priest, in taking down the card, allowed his outward behavior to be influenced by knowledge obtained from the man's confession. The nurse and the other patients would be very likely to think that the penitent had not received absolution, because he had not the proper disposition.

The suggestion that the penitent has only himself to blame if, owing to his bad disposition, he is not absolved, and this becomes known through the priest's actions, is inadmissible, since a confessor may not allow his outward behavior to be influenced by information obtained in a confession. If the penitent refuses, or does not expressly give, permission to the priest to remove the card, and to make the remark proposed to the nurse, the confessor can do nothing but forbid him to receive Holy Communion because he has not been absolved. The patient can then tell the nurse or the priest (not in confession) that he does not intend to communicate, or he may purposely take some food, so as to make it impossible for him to do so. If, however, he will not consent to do anything of the kind, in spite of the priest's persuasion, there is no help for it but for the priest to leave him to his fate and to give him Holy Communion on the following day.

If the penitent agrees to what the priest proposes and does so quite voluntarily (this is a very important point), there is no violation of the seal of the confessional in the priest's action, but the nurse and other patients might very easily suspect one, since he

alone takes action and gives the explanation of it. In this way odium would be brought upon the Sacrament, and on this account this line of conduct seems inadmissible in the case in question. The priest can do nothing, therefore, but ask the patient to refuse Communion, and to declare immediately after his confession that he is not going to communicate the next morning. He must not, however, after the confession is finished, ask the sick man whether he intends to communicate, in order by means of this question to elicit the desired declaration, for this would involve a violation of the seal of the confessional; unless indeed the patient agrees to his asking the question so as to have an opportunity of making the declaration. If the patient himself says that he is not going to receive Communion, there is less reason to fear arousing *suspicio fracti sigilli.* If the confessor is in the habit of asking the hospital patients whether they wish to receive Communion, he may put the question out of confession, and as the chaplain who raised the discussion is liable often to encounter difficulties such as he has described, I should advise him henceforth to ask every patient after, and not during his confession, some question regarding his Communion.—Dr. A. Goepfert.

XXXVIII. PARTIALITY IN BISHOP'S APPOINTMENT NOT SIMONY

The priest Fabius asked his Bishop for his release, which was promised if he could produce evidence of having been accepted in another diocese. In a conversation with Fabius the Bishop offered him the pastorship at a certain place. Several other priests were anxious to obtain this pastorship, all of them more worthy than Fabius, but nevertheless the Bishop selected Fabius. We are asked to decide whether this preference is to be regarded as simony inasmuch as the Bishop, knowing Fabius to be the least suitable candidate for the rectorship, promised it to Fabius in order to retain the roving priest in his diocese. In this case, therefore, the *studiosa voluntas* would be the Bishop's word pledged to Fabius, the *pretium temporale* would be Fabius himself, whom the Bishop desired to keep in his diocese, and the rectorate is the *spirituale,* or rather the *spirituali annexum.*

Against this proposition the following remarks may be made: The assumption that Fabius is the price for which the Bishop has given the position to the same Fabius, is obviously too far-fetched. We may more properly regard Fabius, or rather his continued residence in the diocese, as the object which the ordinary wishes to secure at the price of the position. This continued residence in the diocese is not a *temporale,* in the sense of the definition of simony accepted by theologians, and certainly it is no *obsequium,* taking the place of money payment, but it is simply a matter of continuing the canonical connection between a priest and the

diocese. This connection is not of a private, but of a public nature; it is not temporal, but spiritual, and may fittingly be termed a *spirituali annexum.* Hence it follows that to promise a priest admittance to the ranks of the clergy in a diocese, in return for payment of money, would be simony; but no simony is involved if a priest is induced simply to remain a member of the diocesan clergy by a promise of money or by other means to which a money value can be assigned. Still less can there be any suggestion of simony if the means employed to induce a priest to remain in the diocese are altogether of an ecclesiastical nature, even a *spirituali annexum,* especially a benefice or some similar position in the Church.

The common practise is in harmony with this view, for a Bishop is free to refuse to accept the resignation of a priest, who has not yet received a pastorship, and to give as excuse that a suitable benefice will shortly be conferred upon him. It is true that this must not be understood as meaning that the ordinary may give a binding promise to confer upon him some particular place not yet vacant. To promise a position held by some one else would be to confer an unlawful privilege. The only thing that the Bishop can do is to promise a priest who wants to leave the diocese to do what he can to further his interests. It would be a mistake to lay it down as a principle that the Bishop would in every case be right in retaining his clergy by means of such promises. The matter is left to the discretion of the ordinary to act as he thinks best. He will do well to make no promise when there is any reason to think that the priest, by tendering his resignation, is bringing pressure to bear upon the Bishop.

Although now and then a Bishop may go too far in showing partiality to a priest, and may even give support to one unworthy of it, there can still be no suggestion of simony. We ought not

to forget that the meaning of *Simonia juris divini* must be interpreted strictly, as must also the laws concerning *Simonia juris ecclesiastici,* and they may not be extended to other cases not mentioned in the law. There is no law in existence which declares partiality or favoritism on part of a Bishop to be in simony.

If the Bishop was aware that he was selecting an unsuitable person, or one less suitable than other candidates, for the rectorship, he acted wrongly, but not simoniacally. This is quite clear from the fact that ecclesiastical law furnishes a particular means (*viz., appellatio a mala relatione examinatorum and appellatio ab irrationabili judicio episcopi*) for dealing with the analogous cases of a biased judgment of the qualifications of candidates for a rectorate, by synodal examiners, and of an undue selection of the Bishop, but there is no allusion to a charge of simony. In all these cases the immediate ground of complaint is an act alleged to be unjust, mistaken, or partial; the sin of simony may of course be committed in connection with an unjust action, but that it has been committed requires independent proof. We can speak of simony only when the recognized *indicia* of this offense are present, *viz.*, an unlawful request for, or acceptance of, money and money's worth in return for some spiritual or ecclesiastical service.—Dr. Rudolf Ritter von Scherer.

XXXIX. A MISTAKE REGARDING MASS INTENTION

Father N., according to the usual practise in his diocese, arranges every Saturday the intentions for the Masses during the ensuing week, enters them in his register, and announces them on Sunday from the pulpit. He is accustomed every day before beginning his Mass to look up in the register the intention assigned to that day. One day he opens the book at a wrong place, and reads the intention with which he had already said Mass on the same day in the preceding week. He discovers his mistake only after he has finished Mass. He consults several priests as to whether he is bound to say another Mass for the intention properly assigned to the Mass offered for a wrong intention, or whether he has fulfilled his obligation in spite of his mistake. The opinions of his confratres are divided. Some say that he must offer another Mass for that intention, as the second (erroneous) intention frustrated the original one. Others express the contrary view. Who is right?

Salvo meliori judicio, we believe Father N. not to be bound to offer another Mass for the one originally assigned to the day on which he made the mistake. The intention with which he offers Mass on any particular day depends upon his own decision. On the Saturday he fixed the intention with which he meant to say Mass on the day in question. This act of his will was certainly equivalent to a determination to abide by the intention unless he expressly canceled it. In the act of will is implicitly included

the purpose not to alter the intention or substitute for it another, erroneous, one.

In other words: On that particular day when the mistake occurred, Father N. had two intentions, the one fixed on the preceding Saturday, and the other a wrong one. Which was the *intentio praedominans?* Certainly that which he would have chosen, had the two presented themselves to his mind at the same time. In this case he would undoubtedly have decided in favor of the intention selected on Saturday. This solution of the difficulty agrees precisely with Cardinal Lugo's words (*De Sacr. Disp.*, 8, n. 121): *"Si hodie velis sacrum crastinum omnino applicare pro Petro, ita ut haec applicatio ex nunc praeferatur cuilibet ex oblivione hujus faciendae (a fortiori intentioni jam persolutae!); cras vero applices sacrum pro alio, non censebitur revocata applicatio hodierna, quia fuit magis universalis et revocatoria crastinae."*

Father N. is therefore *not* bound to say another Mass for the (apparently) neglected intention.—Dr. Johann Andlinger.

XL. THE MEANING OF THE CLAUSE "CUM GRAVI (ET DIUTURNA) POENITENTIA SALUTARI" IN MARRIAGE DISPENSATIONS

On February 25, 1890, the Bishop of Nicotera approached the Poenitentiaria with reference to this clause, and asked for a more precise definition of the amount and length of such a *poenitentia gravis et diuturna.* "*Attenta crescente in diem corruptione nec non mala voluntate eorum quibuscum dispensatur quique labiis promittunt quod deinde reapse minime tenent; attenta etiam aliquoties impossibilitate, in qua versantur, . . . quaeritur: An possit injungi poenitentia per tres tantummodo menses sed pluries in hebdomada, quando praescripta est gravis et diuturna, et per unum mensem facienda, quando statuta est gravis poenitentia salutaris?*"

In answer to this question the Poenitentiaria gave no detailed explanation of what was to be considered a *poenitentia gravis et diuturna,* but issued only the following general instructions: "*In praefinienda poenitentiae qualitate, gravitate, duratione, etc., quae dispensantis aut delegati arbitrio juri conformi remittuntur, neque severitatis, neque humanitatis fines esse excedendos, rationemque habendam conditionis, aetatis, infirmitatis, officii sexus, etc., eorum, quibus poena irrogari injungitur.*" ddo 8 April, 1890.

According, therefore, to the S. Poenitentiaria, every confessor applying for a dispensation, is empowered to use his own judgment in imposing a penance, which, taking the circumstances into consideration, shall be regarded as *gravis* or *diuturna.* It would be a mistake to impose as penance in such cases only a few Our

Fathers, since experience shows us that too easy a penance is apt to make penitents think lightly of their transgressions; but, on the other hand, especially at the present time, we must not err on the side of excessive severity. The first principle in imposing a penance must always be that the penitent should not be frightened away from the confessional, but should be confirmed in his resolution to make frequent and good confessions in future. In determining the *gravitas poenitentiae* we ought not to refer to obsolete precepts; there is no reason for thinking that the *gravis poenitentia salutaris* required by the Poenitentiaria need differ in kind from severe and wholesome penance now usually imposed for grievous sin. Nor need the *poenitentia diuturna* be measured by years or months; it is simply a penance to be continued for some time, at least for some days. Under certain circumstances a penance lasting fourteen, nine, or even three days may be regarded as *diuturna* in the sense in which the word is used by the Sacred Congregation. In very few cases ought a penance to be imposed that would last for a year or for several months, even if the penance had not to be performed daily, but only once a week or once a month. The bridal couple may be willing to promise anything, but they will not keep their word, and, once married, they may never trouble about the matter. It is not advisable to impose frequent confession as a penance upon persons who hitherto have only gone to confession at Easter. Circumstances vary so much that we can understand why the S. Poenitentiaria let the matter rest, after giving the decision quoted above, and did not make any direct reply to the question asked by the Bishop.—Professor Johann Ackerl.

XLI. SHAM BIDDING AT AN AUCTION

The property of Sempronius is sold at auction by order of his creditors. Sempronius knows that Rufinianus desires to buy his garden, so he sends two friends to the sale, who, by bidding against Rufinianus, are to raise the price, and they do this so successfully that the garden fetches a good sum. The question is asked whether Sempronius is bound to make restitution.

The seller at an auction can act fraudulently in several ways: (1) If he conceals a defect in a thing put up for sale; (2) if he puts up men to bid against one another in order to raise the price; (3) if he joins in the bidding himself or through others, unless (a) at a compulsory sale, where this is certainly permissible, or (b) in places where it is customary for the seller to join in bidding; (4) if he afterwards substitutes another article for the thing sold; (5) if he refuses to hand over the article for the price offered, except in places where it is the custom to withdraw things if a suitable price is not reached.

From what has been said it appears that Sempronius, if liable to make restitution, would be so solely because of his intention to raise the price of his garden, for, although it is a compulsory sale, he does not really make a bid for purchase, either in person or through his friends. Two points have to be taken into account. Where such tricks are commonly practised, as is very frequently, even almost universally, the case, the matter must be judged more leniently, as a tacit acquiescence can be assumed on the part of the

bidders, who are aware of the custom, and can protect themselves by similar devices (Konings, 1002; Aertnys, 490).

It is also very doubtful what is meant by a sham bidder (*ficte licitans*). Regarded objectively, every bidder is a real bidder, since his bid may be the last, in which case he will have to pay the sum he offered, although he may not originally have intended to acquire the thing. The distinction between a real and a sham bidder is therefore only in the intention with which they bid, and is something within them. As, at a compulsory sale, it cannot be regarded as unfair for the owner to join in the bidding either in person or through some one else, it is probably very doubtful whether the inward intention in this case can render the outward action unfair. Therefore it is scarcely possible to condemn Sempronius for having acted unfairly, and therefore he cannot be required to make restitution.—Dr. A. Goepfert.

XLII. MAY A RELIC BE VENERATED IF THERE IS DOUBT REGARDING ITS AUTHENTICITY?

Bertha has a great veneration for the relics of saints, and possesses a number of them, having inherited some and having received others as gifts. She has papers of authentication for all except one, but she venerates that one as well as the rest. A friend pointed out that if the relic were not genuine she was guilty of superstition. Alarmed at this suggestion, she went to a priest and asked if she had really committed a sin, or if she might venerate this relic.

The questions are: (1) Has Bertha committed a sin? (2) May she continue to venerate this relic?

Answer to (1).—Before we can say whether she has sinned or not, we must consider the state of her conscience. If she has acted *bona fide,* believing it to be undoubtedly right and proper to venerate the relic, she has not sinned; she has acted according to her conscience, which must direct our behavior, even when it is in unconscious error. If, however, she felt any doubt as to whether she ought to venerate this relic, and whether it was sinful to do so, she has committed a sin, because it is not permissible to act in a state of doubt. If the further question be asked, whether the sin committed *ratione dubii* is mortal or venial, we answer with St. Alphonsus that it is venial if the person is otherwise conscientious and has not perceived the danger of sinning grievously, nor the obligation of examining the matter carefully. St. Alphonsus writes as follows (*Theol. mor.,* I. 23): "*Quid, si sciat quis aliquid esse malum, sed*

dubitat, an sit mortale aut veniale et cum tali dubio operatur? Alii censent hunc peccare graviter vel leviter, prout in specie objectum peccati est grave aut leve. Alii tandem satis probabiliter tenent, tantum venialiter peccare, si homo ille minime advertit nec etiam in confuso ad periculum graviter peccandi, neque ad obligationem rem examinandi, modo etiam homo sit timoratae conscientiae." Under other circumstances, the sin would be grievous. *Tantum malum, quantum crediderit*—says St. Bernard.

Answer to (2).—We have to distinguish public and private veneration of relics. As a general rule, when there is not moral certainty regarding the identity and authenticity of relics, they cannot be publicly venerated, nor carried *processionaliter*. This is plain from a decree of the S. Congreg. Rit. 27 September, 1817. Moral certainty regarding the genuineness of relics is present when the ecclesiastical authorities have approved them as relics of saints.

How do matters stand when in some isolated case, in spite of the care displayed by the Church in safeguarding the relics of the saints, some serious error as to their authenticity has crept in? Even in such a case the veneration would not be vain, as a relic is not honored absolutely, but relatively, for the sake of the person to whom it belonged. Relative veneration of the saints extends to their relics, pictures, and statues, which are objects of religious honor, not for their own sake, but on account of their connection with certain saints.

From what has been said, it appears that, in spite of the doubt as to the authenticity of this relic, Bertha may venerate it, especially as the veneration to be given it is private.—Dr. Franz Janis.

XLIII. PROTESTANT BAPTISM

Sempronia, a Protestant maid-servant, is brought to the hospital in a state of total unconsciousness, suffering from gas poisoning. Two experienced physicians examine the patient and agree in thinking that she will die shortly without recovering consciousness. The Protestant clergyman comes to see her and says that, as he can do nothing, he will not visit her again. The Catholic priest at the hospital learns where Sempronia was born, and remembers that not long ago a convert from the same town had to be conditionally baptized, because repeated inquiries had shown that the Protestant clergy in that town were often careless in the administration of baptism. The thought occurs to the priest that perhaps he ought to baptize Sempronia conditionally, doing so quite privately. She seems to have been in good faith regarding her religion, and, in case her first baptism was invalid, her eternal salvation can be secured if she has never committed any mortal sin, or if since her last sin she has made at least an act of imperfect contrition, or can make one still in a conscious moment before death. "Must I baptize her or not?" This is the question that the Catholic priest asks himself. How ought he to decide?

Let us first answer the following questions:

I. What are we to think of non-Catholic baptism in general?

II. Can and ought Sempronia to be baptized under the circumstances stated above?

III. If she is baptized, what ceremonies should be observed?

I. With regard to baptism by a non-Catholic, we must notice, first of all: (1) that it is undoubtedly valid, if the minister baptizes with the intention, matter, and form requisite for the validity of the Sacrament. *De fide Conc. Trident.*, Sess. VIII. can. IV. (2) It is an absolute certainty that many non-Catholic ministers are by no means careful as to the intention, matter, and form, when they baptize, so that the validity of their baptisms is often very questionable. Hence the Catholic Church has repeatedly decided that, in the case of converts to the Catholic faith, the validity of their baptism, administered by a non-Catholic, must be examined in each individual case; and wherever there is any reasonable doubt regarding it, baptism must be readministered conditionally. The *Manuale sacrum* (*Rituale*) of the diocese of Brixen contains the following instructions: "*Baptizati igitur ab haereticis non sine distinctione sub conditione baptizandi sunt, dum si convertunt ad religionem catholicam. Sed juxta decisa a S. Cong. Inquis.* (20 Nov., 1878) *in conversione haereticorum, quocunque loco vel a quacunque secta venerint, inquirendum de validitate Baptismi in haeresi suscepti . . . Si autem pro temporum aut locorum ratione, investigatione peracta, nihil pro validitate detegatur, aut adhuc probabile dubium de baptismi validitate supersit, sub conditione secreto baptizentur.*" *Ibid.* p. 20, 3. Lehmkuhl remarks with regard to this investigation (P. II. nota B, ad num. 19): "*Verissime dicitur, in singulis casibus diligenti examine inquirendum esse, num servata fuerit debita materia et forma. Verum non mea tantum sententia, sed ipsius S. Cong. de Propag. F. judicio illud 'diligens examen'—intelligitur plane, prout adjuncta ferunt, atque suprema lex semper esse debet, ut aeterna salus hominis in tuto collocetur.*"

Regarding the usual result of this investigation Konings says (n. 1264, III. *in fine*): "*Examine ea, qua fieri potest, ratione*

peracto, plerumque dubium hodie remanebit Baptisma ab haereticis collatum. Quapropter universim sub conditione iteratur, non apud nos (in America) tantum, sed et in Anglia, Galliis, Germania, Belgio, Hollandia, et teste Perrone (Bapt., c. V. n. 133 nota) etiam Romae.

It follows therefore that, in the case under discussion, it cannot be ascertained whether Sempronia has been validly baptized or not; and for this reason the Sacrament *may* be repeated *conditionally.*

In answer to question II., Ought Sempronia to be baptized? we are of opinion that she *ought* to be baptized conditionally, if the validity of her first baptism is doubtful, and her present capacity and disposition for a valid and fruitful reception of the Sacrament are at least probable, and if she requires this aid for the good of her soul, and it can be given her without detriment to religion and the public good.

(a) As to her capacity for a valid, and her disposition for a fruitful, reception of holy baptism, theologians are unanimous in requiring of adults at least an habitual intention (in order to render the Sacrament valid) and faith, hope, and the beginning of charity (in order to render its reception efficacious), with at least imperfect contrition for personal sins committed.

These requirements must be considered in detail:

(1) On the subject of the intention requisite in the recipient of the Sacraments, Lehmkuhl remarks: "*Valor sacramentorum, quae in subjecto conficiuntur, eatenus pendet ab homine suscipiente, ut requiratur susceptio, quae dici possit voluntaria. Haec voluntas in homine adulto i. e. ratione utente, personalis adesse debet; in iis vero, qui ad usum rationis nunquam pervenerant, sufficit voluntas ministri, qua nomine Christi et Ecclesiae agit*" (P. II. n. 47).—

"*Ratio est* (scribit Marca, n. 1434), *quia Deus in praesenti sua rerum providentia non vult adultos justificari aut sanctificari sine ipsorum voluntate et consensu.*"—"*Justificatio fit per voluntariam susceptionem gratiae et donorum*" (*Conc. Trid.*, Sess. VI. cap. 7).

The intention differs, however, in the different Sacraments. For the valid reception of baptism, it must be at least habitual, *i. e.*, there must be an act of the will tending towards the reception of baptism, and the recipient must not expressly have recalled this intention, although the act of will no longer exists. The reason why the interpretative intention is insufficient in this case is that it would be unfair to impose upon an adult the obligations which he incurs by baptism, without his express consent.

Several theologians think that supernatural attrition constitutes an intention sufficient for the valid reception of baptism, because contrition, coupled with a resolution to do all that is essential to salvation, includes the reception of baptism. Although the correctness of this view is by no means certain, it possesses enough probability to justify in case of necessity the administration of this Sacrament to a dying person.—Cf. St. Alph., *Theolog. moral.*, l. VI. n. 82; Lehmkuhl, P. II. n. 48, a 77 (2).

(2) Sempronia has given evidence of possessing this intention, for, to the best of her knowledge, she has led a Christian life and has shown that she desires to live and die as a baptized Christian, finding her eternal salvation through baptism and the Christian life. How could her reception of baptism fail to be voluntary? *Quomodo susceptio Sacramenti non sit talis, quae dici possit voluntaria?* She had not merely the desire to take upon herself the duties of a Christian, but for years she has conscientiously fulfilled them, as she knew them. If a marriage, invalidated because only one party to it really gave the required consent, whilst

the other dissembled and merely feigned to give consent, is subsequently to be validated (*juxta sent. communem et veriorem,* S. Alph. l. VI. n. 1114) there is no need for the innocent party to renew the consent, because it continues to be revealed by living with the other. Just as here the *intentio matrimonii* virtually continues, so in Sempronia's case does the *intentio baptismi* continue habitually. If the one is enough to secure the validity of marriage, why should not the other suffice for baptism?

If one who through want of intention receives the Sacrament invalidly, Pope Innocent III says: "*Ille vero qui nunquam consentit, sed potius contradicit, nec rem nec characterem suscipit Sacramenti*" (Marc. 1434). It cannot be maintained of Sempronia *quod nunquam consentit, sed potius contradicit.* "But," some one may say, "if she were fully conscious, she would most likely object to the repetition of baptism by a Catholic priest." This supposition does not, however, exclude the intention required for a valid reception of the Sacrament, for she is baptized, not on the ground of any consent that she might give if she were conscious, but on that of her habitual intention, which we may fairly assume her to have formed unconditionally and never to have recalled.

Another objection which might be raised is this: St. Alphonsus teaches that, in dealing with a heretic who does not usually ask for sacramental absolution, we must not infer, because he displays some signs of contrition, that he has any intention to make a confession, and he cannot be given conditional absolution when he is in danger of death (l. VI. n. 483). Our answer to this objection is that the Saint is speaking of heretics who "*a confessione summopere abhorrent,—atqui Sempronia a Baptismate non abhorret, sed potius vult illud, ergo . . .*" The case would be different if she had expressly formed, and never withdrawn, a resolution never

to accept the help of a Catholic priest. As, however, there is no evidence of such a resolution, we infer, from all that is reported of Sempronia, that there were good reasons for believing her to possess the intention necessary to a valid reception of baptism, and that she was a *subjectum capax* of this Sacrament.

(3) But does she possess the dispositions requisite for a fruitful reception of baptism?

This is a point that must certainly be taken into consideration, for, if we were sure that the baptismal grace could have no effect in Sempronia, because of her defective dispositions, the Sacrament could not be administered, as it would be useless and futile. On the subject of the dispositions required for baptism, St. Thomas writes (in IV. dist. 6, q. 1, a. 3, ad 5^{um}): "*Ad hoc quod homo se praeparet ad gratiam in baptismo percipiendam, praeexigitur* (*in adultis*) *fides, sed non charitas, quia sufficit attritio praecedens, etsi non sit contritio.*" There is no mention here of hope and rudimentary love (*amor initialis*), which, with faith, are the dispositions necessary to justification (*Trid.*, Sess. VI. cap. 6), because the attrition mentioned comprises both. In practise, a man who knows and believes the truths necessary to salvation (*necessaria de necessitate medii*) generally possesses contrition as well as faith. (Cf. S. Alph., *Theol. mor.*, l. II. n. 8, and especially *Hom. Apost.*, T. IV. n. 13.)

If therefore the person receiving baptism has ever made these acts of virtue, and has not nullified them by contrary acts, or made his act of contrition void by subsequent mortal sin, he no sooner is baptized than the grace given by the Sacrament begins to have its effects; otherwise it remains latent until the recipient, by an act of at least imperfect contrition, calls it into activity. (Cf. S. Alph., *Theol. mor.*, *l.* VI. n. 87, a 139.) If Sempronia was in good faith

as a Protestant, we may fairly assume that she practised these virtues, and that on her part there was nothing to stand in the way of the conditional repetition of her baptism.

(b) We have, finally, to consider Sempronia's spiritual needs, and the possible hindrances of a higher nature, which may prevent any attempt to help her.

(1) There is no urgent reason for thinking that Sempronia is in a state of mortal sin, and therefore, in her unconscious condition, *in extrema necessitate spirituali, "ut periculum damnationis ita immineat, ut moraliter loquendo sine alterius auxilio illud evadere non possit"* (Müller, l. II. § 57, n. 8), yet, as she is now absolutely helpless, there is certainly some reason to fear for her eternal salvation.

Sacramenta sunt propter homines; and a Catholic priest can easily, and probably successfully, come to the aid of this wandering sheep in great, possibly extreme, danger of eternal damnation. Indeed, it would be difficult to find good grounds for not even thinking him bound to perform this charitable work, belonging to his official duty.

(2) Among non-Catholics it may happen, under similar circumstances, that baptism cannot be administered without giving rise to public scandal, and to serious danger to either the Catholic religion or the spiritual welfare of the faithful. In such a case, as Konings rightly remarks (n. 1261), the good of the individual must not take precedence: "*bonum enim commune praeferendum est privato.*" There cannot, however, be any danger in connection with the baptism of Sempronia. Her burial as a Protestant, if she really dies, cannot be prevented, but it will cause no scandal, for her baptism will be absolutely private. She may recover her health, and continue to be a Protestant, but this possibility can no

more be an obstacle to her baptism than it would be to that of a child of non-Catholic parents, of whom, if in danger of death, St. Alphonsus says: "*Certum est, posse et debere baptizari prolem (invitis parentibus), si ipsa sit in periculo mortis. Ita communiter, etc.*" (l. VI. n. 129). We may also quote Lehmkuhl (P. II. n. 84): "*In Ordinariis Ecclesia solet, nisi periculum mortis adsit, exspectare consensum alterutrius parentis, atque probabilem spem catholicae educationis.*"

(3) Some one may say: "If Sempronia ought to be baptized, then every non-Catholic who is in danger of death and has lost consciousness ought to be baptized or absolved conditionally; but this is quite contrary to the practice of the Church." In reply we may argue that the reasons and circumstances which have been brought forward in favor of Sempronia's conditional baptism do not exist in the case of every non-Catholic. Where they do exist, the rule, which we quote from Lehmkuhl (P. II. n. 78, not. 2), is certainly not opposed to the practice of the Church: "*Quando igitur secundum doctrinam complurium scriptorum homo sensibus destitutus baptizari potest, non est ratio, cur non fiat, imo charitas videtur ad id impellere.*"

We can now arrive at the following conclusion from the answers to questions I and II:

As the validity of Sempronia's first baptism is doubtful, and her present capacity and disposition for baptism are probable; as, moreover, her spiritual state seems to require this assistance and there is no just obstacle to its administration, she can and may be conditionally baptized; and it is surely an act of Christian charity showing true zeal for souls, if the Catholic priest baptizes her conditionally: *si non es baptizata et si capax es, ego te baptizo, etc.* It would be a mistake to insert the condition "*si disposita es,*"

for this intention on the part of the priest would render the Sacrament null and void if the disposition only developed later, and it would quite frustrate the object of the Sacrament in this case.

If there was any positive reason to suppose that Sempronia desired sacramental absolution, she ought to be absolved conditionally (*si capax es*) after her baptism. If time and opportunity permit, the Bishop's authorization must be asked for absolving a person from heresy, since the case belongs to the *forum externum Episcopi.*

In the same way some positive ground would have to be present, to justify our assuming in Protestants any desire to receive Extreme Unction.

III. What ceremonies ought to be used in administering baptism to Sempronia?

It is a private baptism to one *in extremis;* hence no godparents are needed: *"licet non necessario sit adhibendus patrinus in baptismo privato, tamen bene adhiberi potest, et praestantius adhibetur"* (St. Alph., *Theol. mor.,* l. VI. n. 147, praenot. II.).

With regard to the actual baptism the S. Rit. Cong., on September 23, 1820, issued the following regulations for private baptism of persons *in extremis:*

(1) All that in the *Rituale* precedes the actual baptism may be omitted, and the person be at once baptized in the ordinary way: *ter infundens aquam super caput ejus in modum Crucis dicens: ego te baptizo, etc.*

(2) If the priest has no baptismal water at hand, and there is danger in delay, he may use ordinary natural water.

(3) After the baptism, he is to anoint the person on the brow with chrism, if he has any with him, and is to say meanwhile the words prescribed in the *Rituale: Deus omnipotens, etc.*

(4) He is to give the white cloth and the lighted taper with the usual words.

(5) If the person recovers health, the omitted ceremonies, that ought to precede baptism, are to be performed in the church: "*sed nunquam extra Ecclesiam supplendae sunt ceremoniae omissae,*" as de Herdt says (*S. Lit. prax. de Bapt.*, n. 6).

(6) All these regulations hold good, and are to be observed as far as possible, in the conditional baptism of a non-Catholic, as Konings has shown (n. 1264, I. and VI.).—Johann Schwienbacher, C.SS.R.

XLIV. THE SENSE OF THE WORDS "PURE VIRGIN" IN THE CONSTITUTION OF A RELIGIOUS ORDER

Miss X. applies to the superior of a convent for admission. The superior answers that she may come, but only on condition that she is a pure virgin. X. goes to her confessor, and tells him that she was once so unhappy as to be seduced, but the sinful act had no results, and she repented of it and confessed it long ago. She asks anxiously whether she can describe herself as a pure virgin.

It can scarcely be doubted that the constitutions, to which the superior referred, meant, by the words "a pure virgin," to designate one who is pure in the ordinary acceptation of the word, and in the eyes of her fellow creatures—only those who had "fallen" were to be excluded from admission. It is possible, and is said to have actually happened, that a superior, misunderstanding the text of the rules, has meant really *vera virginitas coram Deo,* and in this way has made the mistake of making admission depend upon a condition not based upon the rules. In this case X. can with a clear conscience call herself a pure virgin, for she is such, according to the constitutions to which the superior has referred. The mistake is on the part of the superior, whose wrongly imposed condition must be regarded as *non adjecta* (cf. Gury, 795 nota). How would matters stand, however, if the rule really required virginity in the eyes of God, and absolute innocence of at least any outwardly dishonorable action?

We can safely assume that the rule of no religious order of women would receive the approval of a Bishop, and still less of a Pope, if this interpretation were to be placed upon it, as such a point would inevitably give rise to many embarrassments and scruples. We can hardly be wrong in believing that the ecclesiastical authorities would not be justified in attaching such a condition to the admission of postulants, for it would be injurious to the community life, and a morally impossible condition.

In an analogous case, St. Alphonsus writes: *Dicunt auctores, quod sponsa ab alio corrupta, etiamsi interrogetur a sponso, an fuerit ab alio cognita, poterit dissimulare et negare per restrictionem non pure mentalem, respondendo non esse corruptam, subintelligens in communi aestimatione* (l. vi. 865). X's confessor may set her mind completely at rest.—Georg Freund, C.SS.R.

XLV. MATRIMONIAL CONSENT

Lucillus and Agnes were married, but the priest, of very old age, accidentally omitted the portion of the ceremony in which the essential "Yes" should have been spoken.

Some time afterwards they quarreled, and Lucillus said to Agnes: "Pack up and be off, you are not my wife." Agnes was astonished, not knowing what he meant, until he explained to her what had happened. The witnesses to the marriage were still alive, and remembered the occurrence; they had noticed it at the time, but thought it only a matter of form, and said nothing, lest they should do mischief. The business was referred to a higher authority.

The marriage was recognized as valid, both by the Church and the state. The Bishop's answer ran as follows: "The couple evidently approached the altar with the intention of being married, and with the same intention they clasped each other by the hand, gave the rings to be blessed and exchanged them in token of their troth that they had pledged, and they signed the marriage contract; all this took place in the presence of the parish priest and two witnesses."

While no one is bound to regard this decision as correct, it is a fact that in some oriental rites the bridal couple say nothing actually expressive of the conclusion of the marriage, which is externally manifested by the clasping of their hands and other ceremonies, often very solemn.

In cases where there is doubt regarding the validity of a mar-

riage that has already taken place, Rome gives no absolute decision, unless the matter is perfectly clear, but in practise she upholds the marriage as far as possible, for "*Actus rite factus praesumitur.*"

In the present case, if the answer "*Non constare de nullitate*" had been received from Rome, the couple would have had to acquiesce in their marriage, at least if it had been consummated, they could not contract other marriage. They would have had to refrain altogether from marriage, *nam obstat impedimentum ligaminis probabiliter existens; cum tanto periculo nullitatis* another marriage could not take place.—Honorius Rett, O.F.M.

XLVI. DEPOSITIONS OF WITNESSES TO A WILL

Peter bequeathed all his property to Paul, and gave him his will to take care of. In the course of the night in which Peter died, Paul's house was burnt down and the will was destroyed. Peter's natural heirs then took proceedings to get possession of what he had left, in spite of the assertion of a witness (whom they acknowledged to be very trustworthy) that he had read Peter's will and had seen that Paul was appointed sole legatee, except a few bequests *ad pias causas.*

What ought the natural heirs to do *quoad justitiam?* and how should they be treated in the confessional?

Answer.—There is no doubt at all about the case as far as the civil law goes, which prescribes: "In default of a valid declaration of the last will, the whole of the deceased's property passes to the legal heirs."

A valid verbal declaration did not exist in this case, and the written document had perished, *ergo* Paul had legally no claim at all upon the inheritance. The existence of one witness is absolutely insufficient for contesting the will in Paul's favor. According to Canon Law, and therefore also according to Catholic theology, *one* witness, however trustworthy he may be, is *not* enough (St. Alphonsus Liguori, Laymann, Holzmann, Lacroix, Viva, Noldin, etc.) to constitute any obligation *quoad justitiam,* regarding a lost will, or one that never was drawn up. The heirs are therefore not in the least bound, *pro foro conscientiae,* to give Paul a farthing.

We must regard the bequests *quoad pias dispositiones* rather dif-

ferently. Writers on Moral Theology teach almost unanimously that the heirs are bound in conscience to pay bequests for pious purposes, even although they may not have been included in a will, provided there is evidence that the deceased desired money to be applied to such purposes. Two witnesses suffice to impose an obligation *pro foro conscientiae.*

Of course the natural heirs are not required to search for witnesses, or to try to find out whether the testator expressed no wish that some of his property should be applied *ad causas pias.* But in this case the knowledge of Paul's statement and of that of the other trustworthy witness regarding the bequests *ad causas pias* contained in the lost will is enough to impose upon the heirs the *obligatio haec legata solvendi pro foro conscientiae.*

A confessor should be particularly warned, in a case of this sort, to leave the heirs *in bona fide,* if *in bona fide* they pay nothing, and he foresees that no admonition on the subject would have any good result. Delama says: "*Confessarius habita ratione ignorantiae fidelium, qui saepius aegre sibi suadent, praefatam assertionem veram esse, plerumque illos in bona fide relinquere debet, et hoc juxta communem doctrinam quoad opportunitatem monendi, vel non monendi poenitentes, qui sunt in bona fide circa aliquam justitiae obligationem. Quodsi confessarius interrogetur respondebit.*" [1]

I should like to add to the last sentence: There is no *dubium prudens* regarding the existence of the will. Therefore a confessor might advise the heirs in a friendly way to give Paul something, but they cannot by any means be considered bound to do so.—Prof. Gspann.

[1] Cf. Gury, n. 818 (*Ed. roma. P. Ballerini procurata*); Delama, Dionysius, *Tractatus de justitia et jure,* Trent, 1881, p. 71, n. 96.

XLVII. MISTAKEN ADHERENCE TO THE RULE AN OBSTACLE TO DAILY COMMUNION IN CONVENTS

There are still here and there communities of women who are deprived of the precious boon of daily Communion, granted and earnestly recommended by the Holy Father, the head of all religious orders upon earth. This deprivation is due to their immediate superior, who considers daily Communion to be incompatible with the routine imposed by rules and customs.

Question.—Who has power to remedy this evil?

In such cases it is the duty of the Head of the Order and of the confessor to overcome the prejudices of the responsible persons, by explaining the papal decree of December 20, 1905, and seeing that it is fully carried out. In this way the religious will be enabled to enjoy their privileges. The following points especially must be kept in view:

(1) Although the confessor should not interfere in the domestic arrangements of the house, it is his duty to discharge the *munus confessarii docendi et monendi,* not only in the case of the subordinate Sisters, but also emphatically in that of the local Superior and her advisers. In publishing the decree, the Holy Father paid particular attention to religious communities, including those of women, as appears clearly from sections 7 and 8, where it is laid down that "freedom of access to the Eucharistic table, whether

frequently or daily, must always be allowed them . . . and in order that all religious of both sexes may clearly understand the provisions of this decree, the Superior of each house is to see that it is read in community, in the vernacular, every year within the octave of the Feast of Corpus Christi."

Members of religious Orders, above all other Christians, are bound to obey the Holy Father's instructions, for he is the head of all Orders, it is to him that they have taken a vow of obedience, and so they are pledged to obey him, although not always *ex formali obedientia voti,* yet at least from the virtue of monastic obedience. The confessor ought to admonish the local superior not merely to inculcate obedience in words and to require it for her own regulations, but also to encourage her subjects to render it most zealously to the supreme head of all religious Orders. It is the duty of the confessor and of the Mother General to show how daily Communion can be arranged in conjunction with the Mass at which the Sisters assist daily, and their other spiritual exercises, so that there may be sufficient time for preparation and thanksgiving without altering the prescribed routine more than is absolutely necessary. It will then be the local Superior's business to announce this re-arrangement of the day's duties to the community, and to see that it is carried into effect.

(2) The confessor ought to adhere closely to the decree in dealing with the individual religious in confession. In section 5 it is stated: "That the practise of frequent and daily Communion may be carried out with greater prudence and more abundant merit, the confessor's advice should be asked." This shows plainly that the penitent, if of the requisite dispositions, *i. e.* if in a state of grace and of right and pious intention, does not need a positive permission on the part of his confessor to communicate daily, since it is be-

stowed by the Holy Father himself; but the penitent will do well to act on the confessor's advice. With a religious a confessor should also regard himself as a counselor, not as one empowered to command, provided the penitent has the right dispositions.

(3) He must beware of forbidding a religious in these dispositions to receive Communion daily, for the decree says explicitly in section 1: "No one who is in the state of grace, and who approaches the holy table with a right and devout intention, can lawfully be hindered therefrom." And in section 5: "Confessors are to be careful not to dissuade any one from frequent and daily Communion, provided that he is in a state of grace and approaches with a right intention."

In his dissertation on "Frequent and daily Communion," Father Haettenschwiller, S.J., remarks: "It would be a mistake on the part of a confessor to a community of women, since the publication of the decree, if he were to say: 'Hitherto you have gone to Communion four times each week; in future you may go every day except on the day appointed for your confession.'"

In the same work it is declared as quite contrary to the spirit of the Church, for postulants and novices, who perhaps communicated daily as long as they were in the world, to be forbidden to do so in the convent, simply to make a difference between them and professed nuns. It would also be a mistake to debar any one from Holy Communion as a punishment for some fault, and a still greater mistake for the Superior to do this. According to the decree "*Quemadmodum*" of December 17, 1890, article V, a Superior may forbid a subject to receive Holy Communion, not as a punishment, but to avoid scandal, if since her last confession she has given scandal to the community, or committed some serious and

notorious offense; but the prohibition can last only until she has again been to confession.

These are a few suggestions that may be of use in removing the alleged obstacles to frequent and daily Communion in communities of women.—Johann Schwienbacher, C.SS.R.

XLVIII. EXTREME UNCTION IN CASU NECESSITATIS

A priest was administering Extreme Unction to a dying person, who seemed to be on the point of breathing his last just before being anointed, for which reason the priest hastily anointed him on the brow, saying: *Per istam sanctam unctionem indulgeat tibi Deus, quidquid deliquisti.* The sick man did not, however, die just then. Ought the priest to anoint the man's eyes, ears, etc., and use the formula of words proper to each application of the holy oil? or may he allow the one application to the brow to suffice?

Answer.—In the first place the wording of the formula needs correction. The priest ought to have said *Dominus* instead of *Deus,* and to have added *Amen;* although the *valor sacramenti* was not imperiled by the alteration. As to the validty of one single application of the holy oil, we may quote a rescript issued by the Holy office on April 25, 1906: "*Cum huic supremae Congregationi quaesitum fuerit, ut unica determinaretur formula brevis in administratione sacramenti Extremae Unctionis in casu mortis imminentis, E^mi decreverunt. In casu veræ necessitatis sufficere formam: Per istam sanctam unctionem indulgeat tibi Dominus, quidquid deliquisti. Amen.*" On the following day, April 26, this decree received the Pope's sanction. Formally the decision refers only to the *forma sacramentalis,* but indirectly it affects also the *materia (proxima) sacramentalis,* as the *materia et forma sacramentalis* make one inseparable sign. If, then, one single sacramental form, in the words prescribed, suffices, it follows plainly that one single sacramental *materia proxima* (anoint-

ing on the brow) also suffices. As, moreover, the decree simply says "*sufficere*," it is not permissible to question the validity of the one anointing, and the anointing must be performed *absolute*, not *sub conditione*, for Extreme Unction can be administered conditionally only when there is a doubt as to the validity of the Sacrament. If the one anointing on the brow, given *absolute*, has already constituted a valid administration of the Sacrament, the anointing of the eyes, ears, etc. cannot be performed even conditionally, and the priest can only supply the omitted prayers and ceremonies.

This is the opinion of almost all the important modern authorities. Lehmkuhl says (*Theol. mor.*, Ed. 11, Vol. II. n. 718): "*Certo unctio unica valida est, v. g. in fronte, si cum ea forma generalis adhibetur. Ita nunc indubie constat ex decreto S. Officii d.d. 25 (26) Apr. 1906, quod formaliter quidem de abbreviata forma, implicite etiam de unctione unica decernit.*" The same writer uses similar language in his *Casus conscientiae* (Ed. 3, Vol. II. n. 671): "*Erant qui dubitarent de valore unctionis utcunque abbreviatae nisi sub suis formis singuli sensus singillatatim ungerentur . . . Verum omnis dubitandi ratio sublata est per decretum S. Officii d.d. 25 Apr. 1906.*" In n. 673 there is another quite consistent remark on the question of conditionally completing the anointing of the various sense organs: "*De valore huius modi collationis dubitari amplius non potest . . . neque amplius locus est quidquam repetendi vel supplendi, si quando moribundus vitam diutius trahat.*" Lehmkuhl expresses the same opinion with equal assurance in his *Compendium theol. mor.*, n. 938, ed. 5. The same view is taken in Müller-Schmuckenschläger's *Moraltheologie*, ed. 7, III, Supplement, p. 24: "*Haec forma in necessitate adhibita juxta plures non est iteranda, ne quidem sub*

conditione. Nam dubium probabile circa valorem non adest, et extra dubii hypothesim non debet nec potest ritus sacramentalis denuo adhiberi. (*Vide Collationes Brugenses,* febr. 1907) *Quodsi ergo moribundus respiret, suppleantur suo ordine orationes praetermissae, juxta praescriptionem Rit. Rom.,* t. V. 1, n. 10.

A similar statement occurs in Schüch-Polz's *Pastoraltheologie,* Ed. 15: "A priest is under no obligation to employ the full form and matter under the condition *'si non es unctus,'* even if the sick person should live some considerable time. A conditional repetition of the Sacrament is unnecessary, because all has been done that St. James prescribes in his epistle, and that the Council of Trent requires in consequence. The prayers omitted may be finished in the sickroom, first those which precede the anointing, and then those which follow it. When contagious diseases are prevalent, the prayers before anointing may be said by the priest in the church, before he goes to the sick man, and those after it likewise in the church on his return. If there is danger in delay, all the prayers may be said in the church after his return (de Herdt, p. 6, n. 207)."

Finally we may refer to Göpfert (*Moraltheologie,* Ed. 6, III, n. 197) and to Noldin (*De Sacram.,* Ed. 8, n. 452), where the same opinion is expressed.

Although there is no obligation to finish anointing the eyes, ears, etc. (*sub conditione*), yet there is no proof that it would be *wrong* to do so; in fact, other authors maintain that it should be done. The editors of the *Acta S. Sedis* (Vol. 39, fasc. 7) remark with regard to the decree of the Holy Office published in that volume: "If the immediate danger passes over, and especially should it be uncertain whether the sick man can receive the other Sacraments, all the anointings should be repeated *sub conditione,* with the proper form of words in each case, and all the prayers previously omitted should be said (according to the *Rituale*)." We should point out

that this is nothing but the private opinion of the editors, not an official statement on the part of the Holy Office. We are aware that the opinion *"licet repetere"* is held by eminent professors in Belgium, and that in recent editions of the diocesan *Ritualia* this conditional *repetitio per longiorem formam* is given. In fact, where the Bishops state their adoption of this opinion in some official publication the parochial clergy are practically bound to adhere to this practice, as it has official sanction; they must, namely, use the *forma abbreviata sub conditione* and later anoint the various organs of the senses, also *sub conditione.*

So much as to the history of this controversy. The New Code, in Canon 947, while allowing in case of necessity one anointing on the forehead with the shorter form, demands that the other anointings be supplied right after, if the person still lives.

XLIX. RELEASE FROM A VOW

A woman takes a vow to enter some religious order, but after her admission to a convent her health breaks down, whilst she is a novice, and she is sent away. Is she now free from the obligation of her vow?

Hitherto the answer given by casuists to this question was in the negative (cf. E. Müller, *Theologia moralis,* Ed. 9, II. p. 192, casus 1; Göpfert, *Moraltheologie,* Ed. 6, I. p. 479, etc.; Lehmkuhl, *Theologia mor.,* Ed. 11, I. p. 333; Noldin, *de praeceptis Dei et ecclesiae,* Ed. 8, p. 239), but it has recently been reversed by a decree of the Congregation de Religiosis dated September 7, 1909, affecting all religious orders of men (*Acta Apost. Sedis,* 1909, no. 17, p. 700, etc.), and extended to orders of women on Jan. 4, 1910 (*Acta Apost. Sedis,* 1910, no. 2, p. 63, etc.).

The Congregation decided as follows: "No one who has been dismissed from a religious community for any reason whatever can be admitted to the novitiate or to profession, under penalty of invalidating the latter . . . Novices and religious cannot in future be admitted to the same order or congregation or province." No one can be required to ask a dispensation from what would be a special favor to the applicant and a violation of the law. Therefore the vow is no longer binding, for it cannot be kept without having recourse to extraordinary means, which cannot be obligatory. (The case would be different if a pledge to have recourse to such extraordinary means had been expressly included in the vow.) This conclusion would hold good whether the person who took the vow had intentionally or unintentionally brought about her dismissal.—Dr. Karl Fruhstorfer.

L. THE CONDITIONS FOR GAINING AN INDULGENCE

Mother Pia, an Ursuline who has taken solemn vows, when wishing to gain plenary indulgences, makes the visits of a church, as is required, but in order to save time she says no prayers, but part of her appointed office (*officium parvum B. M. Virg.*).

Question.—Is this enough to gain the plenary indulgence?

The good works prescribed for those endeavoring to gain a plenary indulgence are usually Confession, Communion, visit to a church, and prayer for the Holy Father's intention. The first point to decide is whether prayers that one is already bound to say suffice for this purpose. The unanimous answer is that they do not: "*nec sufficit, nisi id expresse concedatur, praestare opera jam aliunde debita, ut sunt v. g. jejunium quadragesimale, recitare Breviarium, etc.*" Marc. 1730 (5) with reference to *Decr. auth.*, n. 291 (2).

Beringer writes in the same way (*Die Ablässe*, 1, Part X. p. 80, etc.): "A work which one is already for other reasons bound to perform cannot serve to gain an indulgence, unless the Pope has given permission for it to serve, either when granting the indulgence or in some special decree. It is impossible for one action to satisfy two obligations, each of which requires the performance of this action. . . . Therefore, failing any special indult, fasting on the forty days of Lent, or on Ember days, or vigils, cannot take the place of a fast ordered as a condition for gaining an indulgence. In the same way, according to an answer given by the S. Congregation

of Indulgences, on May 29, 1841, a priest cannot for gaining an indulgence says his Office instead of the prayers prescribed by the Pope."

The question whether the visit to a church on Sundays and holidays, for the purpose of hearing Mass, suffices to gain the indulgence, is answered by some authors affirmatively and by others negatively. The latter give as their reason the fact that to visit a church and to hear Mass are two different things. Beringer advises those who cannot easily pay a second visit to the church, to come early to Mass or to stay after it is over, so as to make the visit and say the required prayers.

With regard to the penance imposed in confession, according to papal rescript of June 14, 1901, any indulgences attached to it may be gained; but from the question which elicited the above-mentioned decision, it does not appear that the performance of the penance can take the place of the prayer to be said during the visit to the church, as a condition to gaining a plenary indulgence (*Acta S. Sedis,* tom. XXXIV. p. 125), unless the confessor, who can impose *opera aliter debita* by way of penance (S. Alph., l. VI. 513), should allow it.

After these general remarks we may answer the question of Mother Pia. In the cases to which we have referred the works have been *opera stricte, i. e. sub peccato debita.* As to the prayers imposed on religious by their Rule, in most cases they do not bind under sin, although, as theologians show, any avoidable omission of them *per accidens* is generally not free from venial sin. Therefore Beringer writes: "As in religious communities the Rule is generally not binding under sin, the prayers and pious practices, enjoined by the Rule, can serve to gain the indulgences which are attached to such works of piety." The Office which Mother

Pia has to say daily belongs to the class of prayers prescribed by the Rule, for the strict duty binding certain religious of both sexes to the daily recitation of the Divine Office *sub gravi* is not applicable to her, for although she has made solemn vows, her order was not intended to say the Divine Office in choir. "*Omnes religiosi* (*solemniter*) *professi ad chorum destinati utriusque sexus obligantur ad horas*" (S. Alph., l. IV. 141). Therefore Mother Pia's practise cannot be blamed nor pronounced insufficient to gain plenary indulgences.—Johann Schwienbacher, C.SS.R.

LI. IS IT NECESSARY TO BE IN THE STATE OF GRACE IN ORDER TO GAIN INDULGENCES FOR THE SOULS IN PURGATORY?

Quite recently two prominent writers on dogma, Christian Pesch (*Praelectiones dogmaticae,* Ed. 3, tom. VII. p. 248) and De Augustinis (*De re sacram.*, tom. II. 339) have favored a view held by the great Jesuit writers Suarez (*Disp.* 53, sect. 4, n. 6) and Bellarmine (*de indulgentiis,* l. 1, c. 14), to the effect that both plenary and partial indulgences can be gained on behalf of the dead even by one who is not in the state of grâce. Naturally those indulgences are excepted for gaining which *confessio* or *contritio* is required by the Church as a *sine qua non.*

The advocates of this theory argue as follows: Although the guilt of sin and its eternal punishment are remitted, a Christian does not by any means always escape its temporal punishment (*Trid. sess.* VI. *can. 30, in Denzinger-Bannwart,* n. 840). *Peccatum* is the *causa efficiens* of *poenae temporales.* Hence it is absolutely necessary for the *homo in statu viae* to be free from grievous sin, before he can attempt to avert *poenae temporales* by doing good works and gaining indulgences. If an indulgence is gained for the souls in purgatory, he who receives it is already *in statu gratiae sanctificantis;* that is certain. *Ergo,* the person gaining it need not be in the state of grace; it is only necessary for him to do the required good works.

Pesch sums up the argument more briefly: "*Status gratiae non requiritur ut causa indulgentiae, sed ut dispositio ad eius effectum recipiendum. Ergo si effectus recipitur a defuncto, non requiritur*

status gratiae in vivente, qui implet conditiones." He even asserts in contradiction to Pohle: "*multi theologi putant, etiam peccatorem lucrari posse indulgentiam pro defunctis.*"

Dr. Josef Pohle (*Lehrbuch der Dogmatik,* III. 522) is altogether opposed to this theory. Pohle argues that indulgences can only indirectly benefit the dead, and that the Church does not directly apply them to the poor souls through the agency of the living.

He is no doubt correct in this statement, but, on the other hand, it is equally correct to believe that all indulgences capable of being applied to the dead can be applied to particular souls. Although the application is *per modum suffragii,* and we cannot know whether the indulgence gained is applied to that particular soul, or applied in its full extent, an indulgence infallibly has some result, and has it in the case under discussion, because the *status gratiae* is present in all holy souls, as a *dispositio ad effectum recipiendum.*

It has been always the custom of the Church to apply the *fructus medius* of the Mass and satisfactory works and indulgences to particular souls, and this justifies us in assuming that the *anima determinata* infallibly receives each time some part, though perhaps a small one, of the *opus satisfactorium* applied to it. With regard to the *effectus satisfactorius* it is, according to Suarez (*de euch. disp.* 79, sect. 10, n. 3 sqq.), a *sententia communis,* that Masses for the dead infallibly secure the remission, *ex opere operato,* if not of the whole punishment due to it, at least of some part of it (Pohle, p. 380).

Taking all these considerations into account, we may safely regard the theory that persons in mortal sin can gain partial and plenary indulgences for the dead as thoroughly reasonable.—Dr. Gspann.

LII. HEARING CONFESSIONS IN FOREIGN LANGUAGES

Titus is priest in a large industrial town where there are workmen of various nationalities, who often know nothing of the language of the country. With the help of several priests who understand the various languages spoken in that town, he has compiled a scheme of confession in several languages, so as to be able, in case of necessity, to hear the confessions of people speaking a language unknown to him. His confrater Commodus asks him: "Why give yourself so much trouble? When they are in danger of death, I can validly absolve such people if they only give some sign of contrition; but otherwise I cannot hear confessions in a language that I do not properly understand."

What ought we to think of the theory and practise of these two priests respectively?

Commodus is wrong in fancying that danger of death is the only case in which a penitent, whose language the confessor does not understand, can validly receive absolution from him. He may receive it (1) whenever confession is necessary, and (2) whenever a confessor cannot be found who understands his language.

Confession is necessary especially in the following cases: (1) At the time for making the annual confession; (2) when it is essential to a worthy reception of Holy Communion, and this cannot be omitted or postponed without neglecting the Easter

precept, or incurring a danger of scandal or suspicion. If the communicant in this case were sure of being truly contrite, he might communicate without confession. St. Alphonsus expressly says that a confessor speaking only a foreign language is equivalent to one who is absent (*Homo Apost.,* XV. sect. n. 26, 3). (3) When the penitent wishes or requires to receive another Sacrament of the living, *viz.*, Extreme Unction, or matrimony, and is not sure that he is in the necessary state of grace or of perfect contrition; (4) When the penitent, if deprived of the grace of the Sacrament of penance, is in danger of falling into grievous sin, or of losing the great benefits conferred by this Sacrament; (5) If he, being unable to make his confession at once, would be obliged to remain two or three days in the state of mortal sin (as St. Alphonsus says, l. VI. n. 487), or even only one day, according to Marc, n. 1698. This would be still more true in a case where immediate confession was necessary because of some special danger or trouble of conscience.

The other condition required, in cases of necessity, to justify a priest in giving absolution without a full confession, is the circumstance "*quo non est copia confessarii, a quo poenitens possit intelligi*" (Marca, n. 1697, 4). *Copia confessarii* ought probably to be understood here in the same way as in the rule that any one who has committed mortal sin must go to confession before receiving Holy Communion. In both cases a commandment has to be observed that binds *de jure divino.* In this sense the following rule may hold good: "*Copia confessarii* does not exist when there is no confessor at hand who knows the penitent's language, and when none can be found without great exertion, because the nearest is perhaps two or three hours' journey distant, or even less, if there are other difficulties besides distance, such as want of time,

bad health, unfavorable weather, etc. (Cf. S. Alph., l. VI. n. 264, and others.) This is the general rule. If circumstances permit, however, it is advisable to send ignorant and spiritually neglected penitents to a confessor who understands their language, and even to do so, if possible, also in cases where confession is necessary, since the assistance of such a priest is often essential not only to the completeness, but also to the validity, of their confession and to the amendment of their lives.

As to the plan devised by Titus in his zeal for souls, it is sanctioned and approved by several authors, for instance by Gury, *Casus consc.,* II. n. 480, who discusses the right course to be adopted by a Catholic missionary who is the only priest in a large district where a language is spoken of which he is totally ignorant. In order that he may be able to some extent to hear confessions, Gury proposes to him to learn the words that denote the sins most frequently committed, and to repeat them interrogatively to his penitents, so that they, *nutu capitis,* or by some other sign, may answer affirmatively or negatively. In this way Gury thinks a confessor can form some general idea of the sins committed by each penitent. The method invented by Titus is in exact accordance with this advice, and he deserves all possible praise rather than the blame given him by Commodus. In order to make his method still more fruitful of results, Titus will do well to notice the following points:

(1) He must secure the validity of the confession by trying in the penitent's language to induce him to make an act of contrition, mentioning the chief grounds for imperfect as well as for perfect contrition. For still greater security he may require a short act of faith to be made before the act of contrition, especially in the *necessaria fidei de necessitate medii, i. e.,* in the most holy Trinity,

also in the Incarnation and death of our Lord Jesus Christ. The penitent is sufficiently reminded of *Deus remunerator* in the act of contrition.

(2) With regard to the completeness of the confession, Titus may follow Gury's method. As a rule no one can be bound to make a confession through an interpreter (S. Alph., l. VI. n. 479, 3). Although it is generally not possible for a confessor, using questions and forms learnt by heart in a foreign language, to arrive at a completely satisfactory confession, which, according to the Council of Trent (Sess. 14. can. 7) is required *de jure divino,* still a confession of sins (although not complete) is advantageous to the penitent and quiets his conscience far more than would be the case if he received absolution after giving merely some sign of contrition.

(3) Finally, Titus should do his best to make his penitent understand that this confession is quite sufficient for the present to obtain pardon from God for all his sins, but that he is bound later on, when he finds a priest who understands his language, to make a fuller and more exact confession of sins that he has now been unable to confess properly. All theologians agree in recognizing this obligation on the part of the penitent, and the contrary opinion was expressly condemned by Pope Alexander VII, as *sent. damnata.* This obligation cannot be imposed in certain cases: (a) on the dying, when there is no probability of their ever again seeing a priest who knows their language; (b) on penitents who have only venial sins, and therefore no *materia necessaria,* to confess; (c) on such as had only one or two grievous sins on their conscience, and have succeeded in making a full confession of these sins by the method described above; and (d) on those who are *bona fide* unaware of this duty, and of whom there is good

reason to fear that they would not accept the admonition, or would later neglect, by their own fault, to follow it, so that it would do them more harm than good, and might possibly render their confession altogether invalid.—Johann Schwienbacher, C.SS.R.

LIII. THE OBLIGATION TO SAY STIPEND MASSES

Father Paulus received a large sum of money from a lady whom he visited frequently during her illness, and to whom he supplied all consolations of religion. She asked him to see that the money was spent for Masses after her death. He put the money in the savings bank of the town, and when the lady died, two years later, he took out part of it in order to have Masses offered by befriended priests, but the rest he intended to appropriate for the Masses that he would say himself. As he had other similar duties to perform, nearly two years elapsed before he had said all the Masses. Did he act rightly?

In taking the money to a savings bank, Paulus did as he was bound to do. As long as the giver lived he was in the position of custodian of money not his own, the interest of which belonged to the owner. He had to deal with it as a sensible owner would do, and a sensible man nowadays invests his money where it will bring in interest. He might of course deduct car fare, and any other incidental expenses. The owner was free to appropriate the interest or to apply it to some definite use. As she did neither of these things, it was added to the capital and increased the number of Masses. It is plain that the lady before her death might have asked for the money to be returned, and have put it to some other use. In order to fulfil the obligations of a careful custodian, Paulus ought to have made a note of the source whence he obtained the money and the object for which it was given, so that if he should die suddenly, the money entrusted to him would be put to its proper use.

As soon as the owner died, her instructions had to be carried out, and Paulus was bound either to say the Masses himself, or to arrange for them to be said by others, and in return he acquired a right to dispose of the money. Hitherto he had only been its custodian, so that if it had been lost through no fault of his (*e. g.*, if it had been stolen), he would have been under no obligations with regard to it, but now he was its owner, and had all the duties and responsibilities of ownership. If it were now lost, it would be his duty to have the Masses said at his own expense.

Noldin, *de sacramentis,* no. 184, writes: "*Inito hoc contractu (Do, ut facias) in sacerdotem transit dominium stipendii cum obligatione justitiae applicandi missae sacrificium ad intentionem dantis, cui obligatoni vel per se vel per alium satisficere potest. Si ergo sacerdos quocunque casu fortuito stipendium receptum amiserit, non cessat obligatio applicandi, cum res domino pereat.*" A contrary opinion is, however, held by some authorities; Génicot, for instance, says (*Th. mor. inst.,* II. 230): "*Omitti poterant ex toto vel ex parte Missae manuales, si pecunia pro stipendio accepta ex toto vel ex parte periit, puta furto sublata.*" Since the issue of the decree "*Ut debita*" by the S. C. C. May 11, 1904, it has not been permissible to hold this latter opinion, for there is in the decree an explicit statement (no. 6) to the effect that if any one has in any way undertaken to say Masses he is bound by his obligation until he receives from those to whom he has transferred the *stipendia* definite information that the Masses have been said, "*adeo ut si ex eleemosynae dispersione, ex morte sacerdotis, aut ex alia qualibet etiam fortuita causa in irritum res cesserit, committens de suo supplere debeat et missas satisfacere teneatur.*" Paulus is therefore fully responsible for the Masses that have to be said.

The will of the giver of the money decides the number of the

Masses and the amount of the *stipendia.* It is a very commendable custom to ask the necessary questions on this subject when the *stipendium* is given, in order that there may be no obscurity as to the obligation incurred and the manner of its fulfilment. The wish of the giver is, according to the rules of the Church ("*Ut debita,*" no. 2, 4), decisive also in regulating the time within which the Masses are said, and the transference of the intentions. In this particular case the lady gave no special instructions, and therefore the ordinary rules of the Church ought to be observed. The number of Masses depends upon the amount of the money given, and the *stipendium* usually paid, or required, in the diocese. This is the standard for Masses provided for by a legacy, and the same standard is applicable to the *stipendia* for Masses entrusted to other priests. "*Eleemosynam nunquam separari posse a missae celebratione neque in alias res commutari aut imminui, sed celebranti ex integro et in specie sua esse tradendam.*" These words are quoted from the decree "*Ut debita,*" no. 9, which now is the chief authority on these subjects. In no. 11 it is laid down that in pilgrimage churches, where the faithful offer large *stipendia,* nothing may be deducted for the good of the church. A rector may not deduct anything to cover the expenses for wine, candles, etc. from the *stipendium* of the priest who says the Masses, but something may be asked for the sacristan and servers.

Special decisions dated February 25 and 27, 1905, sanction a custom prevailing in many places, according to which a curate says Mass for the parish priest's intention, or hands over the *stipendium* to him, receiving in return the ordinary maintenance, but only "*dummodo et quousque in modo aut alius abusus non oriatur, super quo Ordinarii erit vigilare.*" The Church desires strictly to forbid every kind of bargaining in connection with the acceptance and

transference of *stipendia* for Masses. (As an exception and *pro gratia ad quinquennium,* in the archdiocese of Tarragona in Spain, the episcopal administrator is allowed to keep back three per cent of the *stipendia* for Masses, in return for his work and expenses, and in the same way the Congregation of the Most Holy Redeemer may make a small deduction from *stipendia* given, but not collected, for the benefit of their missions, if they are transferred.) Paulus gave the intentions and *stipendia* for them to other priests; it did not even occur to him to see (*e. g.* Noldin, *de sacr.,* 192) whether he could find a reason for diminishing the amount for his own advantage; as a matter of fact he would have found none that applied to him.

He gave the intentions to priests whom he knew and asked them to say the Masses, and he acted quite correctly. The rule laid down by the Church (no. 5) runs as follows: "*posse missas tribuere . . . sacerdotibus sibi benevisis, dummodo certe ac personaliter sibi notis et omni exceptione majoribus.*" The rules of the Church are therefore very stringent;—the priest to whom any one gives *stipendia* must be personally known, and must be a conscientious priest, who affords full security that he will faithfully perform the duty undertaken for the giver of the *stipendia.* It is simpler if they are sent to the Apostolic See, to the Propaganda, or to papal delegates (for priests in the east), or to the Ordinary (in the case of seculars, the Bishop of the diocese; in that of regulars, the General of the Order). If this is done, all responsibility is at an end, for it is transferred absolutely to the Ordinary, who is equally bound to fulfil the obligations (nos. 6, 7). If *stipendia* for Masses in any form whatever are transferred to another priest, the person transferring them is not free from responsibility until he is definitely informed that the Masses have been said (no. 6). This information

may be given either in writing, or verbally if there seems no need to write.

Since priests as well as Bishops are required to notify the fact that the Masses have been said, and since the S. C. C. in three decrees (*"Vigilanti,"* May 25, 1893, *"Ut debita,"* May 11, 1904, *"Recenti,"* May 22, 1907) has stringently laid down that the wishes of the faithful with regard to Masses are to be carried out exactly and conscientiously, it is the duty of every priest to conform to these regulations. If therefore Paulus receives no notification from the priests concerned, to the effect that the Masses have been duly said, he must make inquiries, when he has opportunity, so as to obtain the necessary information and quiet his own conscience.

Paulus reserved for himself the chief part of the intentions and *stipendia.* He took from time to time the money for twenty or thirty Masses out of the savings bank, and then said the Masses; and he continued to do this until the whole sum of money, and the interest on it, were exhausted. He might, strictly speaking, have spent the interest on himself; for as soon as he became owner of the money, and had undertaken the obligations attached to it, he could act on the principle *"Res fructificat domino."* The interest was *fructus industrialis.* It was praiseworthy of him to apply the interest also to Masses for the deceased lady, but he was not bound to do so. As to the time within which the Masses ought to be said, besides the wishes of the lady giving the *stipendia,* the decision in the decree *"Ut debita,"* nos. 2, 3, 4, must be taken into consideration. The decree states: *"Utile tempus ad manualium missarum obligationes implendas esse mensem pro missa una, semestre pro centum missis et aliud longius vel brevius temporis spatium plus minusve juxta majorem vel minorem numerum missarum."* Therefore one Mass, irrespective of its particular intention (apart

from a possible decision expressly or tacitly stated in the intention by the giver), must be said within a month. This applies to each single Mass, and also to cases in which several people each desire a Mass to be said. For instance, if on All Souls' Day, thirty people should come to a priest, each wishing to have one Mass said, he must either decline to receive more intentions, or must point out that the Masses can only be said later. If they agree, there will be no further difficulty. If any one asks for one hundred Masses, they must be said within six months. The remark added to the regulation fixing the period within which Masses must be said shows that it is not to be interpreted too strictly. The expression *utile* and not *necessarium tempus* is also characteristic. The rule is given in accordance with what appears useful and expedient, but a certain freedom is left. In comparison with six months, a period of three, four or five weeks is described by some authors as *tempus breve.* No. 3 contains a definite limitation: "*Nemini licet tot missas assumere quibus intra annum a die susceptae satisfacere probabiliter ipse nequeat.*" No. 4 requires that foundation Masses not said at the end of the calendar year, and manual Masses not said *post annum a die suscepti oneris, si agatur de magno missarum numero,* must be given over to the Ordinary. The Church requires that in the case where the giver of the *stipendium* has not in any way fixed the time when the Masses are to be said, they must be said within a reasonable period, and that any accumulation of intentions (*numerus maximus, ingens copia,* as it is called in the decree "*Recenti*"), and the risks inseparable from it, shall be avoided. Hitherto no more detailed instructions have been issued by the Church, and it would be a mistake to think that the statements made by certain writers have ecclesiastical authority. Such writers are Schüch-Polz, *Pastoraltheologie,* 15, p. 416, and Noldin,

de sacr., no. 187. (*" Si itaque ab uno eodemque sine determinatione temporis offertur una usque ad 10 missas, intra mensem, si offeruntur 20, intra duos menses, si 40, intra tres menses, si 60 intra quatuor menses, si 80 intra quinque menses, si 100 intra sex menses et sic porro, si 200 intra annum persolvendae sunt."*) These detailed statements originated in a question asked by the Ruthenian Archbishop of Lemberg (*" An juxta art. 2 termini persolutionis statui possint "*); the answer of the S. C. C. (there is no suggestion of a decree, although Polz speaks of one) on February 27, 1905, is as follows: *" Rem relinqui discreto judicio et conscientiae sacerdotum juxta decretum et regulas a probatis doctoribus traditas."*

The Archbishop's proposal was therefore neither accepted nor rejected by the Sacred Congregation; it certainly was not recognized as an official regulation, but was set aside, and the Congregation directed adherence to the decree and the rules of eminent authorities in a reasonable and conscientious way. *" Ubi lex non distinguit, neque nos distinguere debemus "* is an old rule still in force.

The wishes of the person giving the *stipendia* have more weight than anything else, with regard to the fulfilment of the obligation to say certain Masses and to the time at which they are said. The decree *" Ut provida "* was issued to protect the interests of the giver of *stipendia*, and in it there are several statements to this effect. For instance, in no. 3, *" Salva semper contraria offerentium voluntate, qui aut brevius tempus pro missarum celebratione sive explicite sive implicite ob urgentem aliquam causam deposcant, aut longius tempus concedant, aut majorem missarum numerum sponte sua tribuant "*; and in no. 4, *" salva diversa voluntate offerentium."* If therefore the person who has the Mass offered wishes it to be said on some particular day, it must be said then. Exact instructions on this point are very desirable, if not actually necessary,

and it is also advisable to tell the person asking for Masses whether or no they can be said on the days appointed. In many cases it is plainly the wish of the person having the Mass said that they should be said as soon as possible; for instance, a Mass of thanksgiving for a safe delivery, or a Mass for some one who has just died, should be said without delay; but when the Mass is in honor of some Saint or for the Holy Souls, the day is left more or less to the priest. This is particularly the case when, as the decree states explicitly, any one voluntarily asks some special priest to say a number of Masses. If a considerable sum for Masses is given to a priest on one occasion, the giver must of course be aware that it will take some time to say all the Masses. He agrees, in such a case as this, to their not being said within a year, but during a longer period. This consent can safely be taken for granted when the request for Masses is made to an individual priest or confessor, and not at the presbytery. This is what took place in the case under discussion. As Paulus was the confessor of the lady in question, she commissioned him to provide for the repose of her soul after her death; he may and must say the Masses, as far as he can and when he can; and he is at liberty of course to share the task with other priests by asking them to say Masses for the same intention. This was no doubt the wish of the lady who gave him the *stipendia,* and therefore he has acted quite rightly in the matter.—Prof. Asenstorfer.

LIV. BINATIO

In a parish the pastor was suddenly taken ill in the night between Saturday and Sunday. Feeling himself unable to say Mass on Sunday, he sent for his assistant before six in the morning, and told him to say the early Mass as usual, because there were already a great many people in the church who could not possibly attend a later Mass. He was not to take any purification or ablution after Holy Communion, because he would have to say the second Mass at 9 A. M. and it was impossible to omit this Mass, as a number of people were expected from other parishes to celebrate the meeting of a confraternity.

The assistant pointed out that duplication was not allowed without the Bishop's permission, but the rector reassured him, and said that in such unforeseen circumstances one might take this permission for granted; he would himself report what had happened. The assistant obeyed, and at the first Mass explained matters to the congregation, and later celebrated the Mass at nine o'clock, although he felt some anxiety, and his parishioners were somewhat astonished, as well as the strangers who had come to the festival and had heard of the occurrence. What opinion ought we to form of the rector's action?

Answer.—According to the existing laws of the Church, *binatio* (except on Christmas day) is allowed *de jure communi* only in case of necessity. A case of necessity occurs on days when the faithful are bound to hear Mass, and one priest has to serve two churches at some considerable distance apart, so that the congre-

gation of one church would be unable to hear Mass at all if the priest did not come. Another case of necessity occurs when it would be impossible for all the parishioners attending one church to be present at the same Mass. In both these cases the Bishop must recognize the actual necessity of *binatio* before sanctioning it. Apart from a case of absolute necessity a Bishop can sanction *binatio* under special circumstances (Missions, etc.), only if he has received faculties from the Holy See. That we have a *casus verae necessitatis* under discussion is plain. The strangers who were coming to the nine o'clock Mass would have missed Mass altogether if the early Mass had been the only one said that day, and so would a considerable part of the ordinary congregation. If the early Mass had been omitted, and the High Mass at nine o'clock had been the only one said that day, there would be good reason to fear that many of the people already assembled would not return, and so would miss Mass. It would be an *incommodum grave* for them to wait three hours or to go to some other church, which might be far away. They could not hear early Mass anywhere, and the second is, as a rule, much later in the morning. In the short interval (from six to nine o'clock) it was hardly possible to obtain the Bishop's sanction, especially if there was no telegraph office in the neighborhood, and the nearest station was some distance off. Hence it was quite right to take the Bishop's permission for granted, and all requirements were satisfied by the official report sent in later.

Noldin (*Summa theol. mor. de sacram.*, n. 206) discusses a precisely similar case, and says: "*In casu improviso urgentis necesitatis, in quo recursus ad episcopum impossibilis est, ex praesumta licentia altera missa celebrari potest, modo celebrans sit jejunus. Si e. g. in loco, ubi duo sacerdotes curam animarum agunt,*

die sabbati unus eorum morbo corripitur, adeo ut sequenti die celebrare non possit, alter die dominica binare potest, si alius sacerdos haberi nequeat et alias magna pars populi (60 circiter personae) sacro carerent. Post factum tamen res ad Ordinarium ad recognitionem causae referenda est." (Cf. also Gury, *Casus consc.*, II. n. 264).—Dr. Johann Gföllner.

LV. IS DAILY COMMUNION ALLOWED IN SPITE OF INNUMERABLE VENIAL SINS?

Whoever maintains, assuming the state of grace to exist, that daily Communion is permissible in spite of the presence of innumerable, or even very many, venial sins, is directly opposed to the first three practical points in the decree of December 20, 1905.

In the first place, he overlooks the good and pious intention, emphasized in the first two points as an indispensable condition; for such an intention is altogether incompatible with innumerable or a great many venial sins. Any one who commits innumerable venial sins must be aware that he is deficient in a good intention at Holy Communion, and has wilfully a bad intention of going to receive it merely out of habit, or vanity, or from motives of human respect. If any one communicates daily for some time as a matter of course, although he has innumerable venial sins on his conscience, he is paying no attention to one of the chief reasons for receiving Holy Communion daily, which is that by means of this divine remedy our weakness and frailty may be cured.

The third practical point in the decree also suggests a negative answer to the question whether daily Communion is permitted in spite of innumerable venial sins. We shall do well here to follow the text, which runs thus: *Etsi quam maxime expediat ut frequenti et quotidiana communione utentes, venialibus peccatis saltem plene deliberatis eorumque affectu sint expertes, sufficit nihilominus ut culpis mortalibus vacent, cum proposito se nun-*

quam in posterum peccaturos; quo sincero animi proposito fieri non potest quin quotidie communicantes a peccatis etiam venialibus, ab eorumque affectu sensim se expediant.

The Congregation of the Council distinguishes here three things that are unfortunately often confused, even at the present day. In the first place, it praises and recommends (*etsi maxime expediat*) the best and most desirable dispositions, which are however merely matters of counsel, *viz.*, freedom from all venial sins and from all attachment to them. By these words it condemns any complete and unscrupulous indifference on the part of daily communicants to innumerable or all possible venial sins. Let us imagine a physician saying to a patient: "Your best plan is to take this medicine as far as possible when you are fasting, although it is not absolutely necessary for you to do so." The patient would certainly be acting contrary to the express wish of his doctor if he disregarded his advice to the extent of always eating as much as possible before taking his medicine, thus not trying in any way to comply with the physician's instructions. In the same way it is plain that a person acts altogether in opposition to the will of the Church, if he commits as many voluntary venial sins as he can, and then has no scruple in approaching Holy Communion daily. In the second place, the Church emphasizes the indispensable and sufficient conditions for Communion, *viz.*, freedom from mortal sin and an intention never to sin in future. It might strike any one considering these words closely that the good intention previously emphasized is here simply called a resolution not to sin. "Why," it may be asked, "did the Congregation of the Council, in the very sentence in which it distinguished venial and mortal sins, describe the necessary resolution merely by the words *nunquam se peccaturos*, without adding *graviter*

or *mortaliter* to make the meaning clear, as many translators have done, interpreting the meaning according to the usage of moralists?"

We think that the following suggested explanation is probably correct: This identification of the resolution — never to sin again — with the required good intention, and especially the omission of the word *graviter* before *peccaturos,* show that the S. Congregation wished to avoid any appearance of sanctioning daily Communion in the case of those who, being in the state of grace, resolve only to avoid mortal sin, but take no pains to avoid venial sin, — which is equivalent to being indifferent to innumerable venial sins. Even if this explanation is incorrect, we are in a position to prove that the Congregation of the Council meant mortal sin more immediately, when using the word *peccaturos,* but at the same time considered the resolution quite incompatible with complete indifference to innumerable venial sins, and far more incompatible with a positive determination not to trouble at all about venial sins. A real resolution never again to sin (grievously) implies, at least in a general way, the further resolution to avoid all immediate occasions of mortal sin and to use all needful means to prevent it. It is an axiom, based both on asceticism and experience, that complete indifference to quite deliberate venial sins gradually leads to mortal sin, because the will constantly grows weaker and because the special graces, without which the soul cannot remain in the state of grace, are withdrawn more and more. Therefore complete indifference to innumerable venial sins is absolutely incompatible with a genuine resolution never in future to sin (grievously), quite apart from the fact that such a communicant would not possess the good intention that is required.

We are now in a position to understand the conclusion of the third paragraph of the decree: "If they have this sincere purpose, it is impossible but that daily communicants will gradually emancipate themselves even from venial sins, and from all affection thereto."

It is not correct to say that constant resistance to venial sin is of necessity contained in the condition, required by the decree, for daily Communion. What really follows of necessity from the practical instructions in the decree is that, at the time of Communion, we must not only be in the state of grace, but have the good intention (we need not discuss other good intentions), the firm resolution "by means of this divine remedy to cure our faults and frailties," or at least to avoid mortal sin, and consequently to resist venial sins in so far as they may become immediate occasions of mortal sin. If we are trying to find out the necessary conditions and conclusions, and nothing more, it appears not essential that this resolution should be permanent, but sufficient if it is present actually, virtually or habitually, at the time of Communion. Assuming such a resolution to be present, the daily reception of Holy Communion, supplying, as it does, an increase of grace *ex opere operato*, will produce a permanent and habitual disposition of mind, and the daily renewal of good intentions and of the pious practises connected, *ex opere operantis*, with daily Communion. It is impossible that these means will not result in energetic resistance to venial sins, so that they will gradually be diminished in number, and all attachment to them will be destroyed in the soul, although it may never be completely exterminated. The soul will be constantly under the influence of quite extraordinary graces, and will cooperate with them in a truly heroic manner.

The more resolutely one struggles against venial sins, the better in his disposition for daily Communion, and the greater is the benefit that he derives from it. In cases where there is no effort at all made to avoid deliberate venial sins, and where there is complete indifference to them, a communicant ought to be gently admonished and encouraged to do better, and, if this has no effect, it should be explained to him that he cannot conscientiously receive Holy Communion daily in such dispositions, for he has not the necessary good intention, and an absolute absence of all progress becomes in time a certain sign of defective intention.

Every priest ought to keep in view the charitable spirit of the Decree and the fact that, in issuing it, the Holy Father's chief intention was to advocate and restore the practise of frequent and daily Communion.

Persons liable to commit mortal sins, who by help of the Sacraments and especially by means of daily Communion succeed, in spite of many falls, in gradually overcoming their habitual sins, undoubtedly possess the requisite degree of good will, and ought not, during this period of struggle, to be judged harshly because of their persistence in many venial sins, but rather leniently because of their honest resistance to mortal sin. A similar remark may be made with regard to those who, for some time after their conversion, find it very hard to stand firm. In spite of many venial sins they often make really heroic efforts, and obtain the strength to do so chiefly from frequent or daily Communion. With others, whose position is more assured, we may in time become more strict with regard to venial sins, should they appear quite indifferent to them.

With respect to the struggle against venial sins necessary in daily communicants, the truth lies midway between lax indif-

ference to innumerable, deliberate venial sins and the other very desirable, but not absolutely indispensable extreme, — constant resistance to all sin. This was the normal practice in the Church, recognized by St. Thomas Aquinas and the Council of Trent, and followed by the early Christians and the Fathers. After falling into abeyance for a time, it has been restored in its original form by Pope Pius X.— J. Bock, S.J.

LVI. REVALIDATION OF MARRIAGE AFTER AN ARBITRARY SEPARATION

Rufus and Veronica were married according to the rites of the Church, but as he had sinned with her sister before his marriage, and had obtained no dispensation, their marriage was invalid before the interior forum.

He left Veronica of his own accord, in consequence of family quarrels; long after, he went to confession and disclosed his anxiety regarding the invalidity of their marriage, asking for advice. The question arose: "Is a revalidation in the interior forum possible after a separation of this kind has taken place?"

It is certainly possible if they both renew their consent, provided they begin to live together again; but a *sanatio in radice* cannot be effected, if one party plainly no longer intends to regard the other as a partner.

Provided they are reconciled, a revalidation of their marriage can take place; but if they continue to live apart, an ecclesiastical recognition of the nullity of the first marriage might be obtained by means of oaths, and both would be free to marry again, though their children would be legitimate, owing to the *bona fides* of the one party.—Honorius Rett, O.F.M.

LVII. SECRET COMPENSATION JUSTIFIED BY A PROMISE

Martina, a woman in poor circumstances, had a wealthy sister Rosina, who was a widow with children. The latter said to her: "If you will send your clever daughter, Caroline, to college, I will pay all her expenses." In consequence of this offer, Caroline finished her course at the high school, and with her aunt's consent proceeded to the college. Rosina kept her word and paid all Caroline's expenses until the time of her death, which occurred suddenly. Martina, knowing that her sister had left no will, at once took $1000 out of her sister's cash-box, a sum which probably would barely suffice to enable Caroline to complete her course. The question is asked whether Martina acted rightly.

With regard to private compensation or indemnification, St. Alphonsus writes as follows in his work "*Homo Apostolicus*" (X. n. 21): "Three conditions are necessary if private indemnification is to be admissible: (1) The debtor must incur no loss by it; (2) the debt must be just and certain; (3) it must be impossible to obtain payment in any other way, for which reason a creditor should first claim the money by legal methods; although, should any appeal to law on his part involve great expense, or hostility, or any other disadvantage, he does not commit a mortal, or even a venial sin, if he fails to have recourse to it on that account."

A debt is regarded as certain, if it depends legally on *justitia commutativa*, and not merely *ex fidelitate* or some other Christian virtue, and if there are no reasonable doubts as to the facts of the

case. Authorities warn us against private indemnification in cases where the advantage is based on a mere promise, since a promise, even after it has been received by him for whose benefit it was made, is generally, according to a very probable opinion, binding not *ex justitia commutativa*, but only *ex fidelitate*, and it is often uncertain whether the person who made the promise really intended to impose upon himself an obligation binding on his conscience.

Although the laws of Church and State seem opposed to our regarding private indemnification as permissible in the case under consideration, there are several good reasons for thinking it allowable.

(1) By her promise Rosina imposed a charge not only on herself but on her property, so that it may be treated as a *promissio realis*. She was entitled to do this if it was not to the disadvantage of any possible creditors, and involved no danger of diminishing the proportion that she was legally bound to leave to her heirs. That she fully intended to pledge herself appears from the implied agreement: "*do ut facias*": *i. e.*, "I pay the expenses, if Caroline studies." Such a *promissio realis*, according to Lehmkuhl (n. 1062, 4), passes on to the heirs: "*si post promissionem acceptam sed ante executionem moritur promittens, promissio realis transit ad haeredes; promissio personalis non transit.*"

As secret indemnification seemed to be the only way by which Martina could obtain, after Rosina's death, the money to which she was entitled, it cannot be considered wrong. But the whole amount must be spent on Caroline's education. If for any reason she should not complete her course, the balance properly belongs to Rosina's heirs.

(2) If the person promising foresees that failure to comply with his promise would cause serious loss to the other party, the promise is binding, even a purely personal promise, *ex justitia commutativa: "quaevis promissio per accidens obligat ex justitia, si proximus ex non servata promissione damnum pateretur"* (Marca, n. 1062), a circumstance that would plainly occur in this case, if Caroline were unable to continue her studies after Rosina's death. This is another and very important reason for regarding the secret indemnification as permissible.

(3) A third reason would exist if Martina took the money from her dead sister's cash-box *bona fide*, believing that she had a right to it; for in this case, even if the promise were purely personal, there could be no obligation to make restitution. To the question: *"an promissarius occulte suscipere possit rem promissam, si haeredes promissioni stare recusent,"* Marc answers (n. 1062, q. 4): *"Nego, cum probabiliter res non debeatur ex justitia. Si tamen bona fide rem occupaverit, potest eam retinere, donec sententia judicis aliter statucrit, ob probabilitatem opinionis obligationem justitiae affirmantis. In conflictu enim opinionum probabilium, standum est pro possessore, sit notum est."*

These arguments justify us in regarding Martina's secret indemnification as quite permissible.—Johann Schwienbacher, C.SS.R.

LVIII. DELEGATION FOR THE PAROCHUS PROPRIUS OF THOSE ABOUT TO BE MARRIED

The rector of the parish church at X was summoned one morning from his confessional to the sacristy. He found there two people anxious to be married, and their witnesses. They all came from a town in another diocese, but they were accompanied by their *parochus proprius,* who asked the rector's permission to marry them there. The permission was readily granted, and the rector was careful to add that he also gave the delegation, which was necessary according to the decree "*Ne temere.*" The other priest replied: "I do not need that, for I am the parish priest of the couple about to be married." This opinion was expressed so decidedly as to make any discussion then and there inadvisable. The strange priest then proceeded with the marriage ceremony, but when all was over, an argument arose on the subject, in the course of which he referred to a decision published in the *Acta S. Sedis* in answer to several questions, one of which (*dubium* IX) was said to run as follows: "*Ubinam et quomodo parochus, qui in territorio aliis parochis assignato nonnullas personas vel familias sibi subditas habet, matrimoniis adsstere valeat.*" The answer to this was: "*Affirmative, quoad suos subditos tantum, ubique in dicto territorio, facto verbo cum Ssmo.*"

It is asked which of the two views is the correct one?

Answer.—I. The priest from the other town quoted the decision of the Congregation of the Council of February 1, 1907, (*Acta S. Sedis,* V. xli, p. 111) quite correctly, but he entirely

failed to understand it. The decree "*Ne temere*" states clearly that the priest can assist validly at a marriage *only* (*dumtaxat*) within the boundaries of his own parish. As soon as he goes beyond them, he ceases to be the parish priest able to act as *testis autorizabilis* at a marriage, and if he desires to officiate at a marriage in another parish, he requires the authorization of the *parochus loci.*

The decision of the S. C. Concilii quoted by this priest applies to the right to officiate at marriages possessed by priests who exercise the cure of souls, not in a particular territory assigned to them, but over certain families or individuals living within the jurisdiction of another parish priest (for instance, army chaplains). It appears from the *Votum Consultoris* (*Acta* S. S., V. xli, p. 86, etc.) that the decision quoted was elicited by a question, asked by the Archbishop of Compostella, as to whether the priest of S. Maria de Coricela in Compostella, who held jurisdiction as parish priest over only a few families in the town, could validly officiate at the marriages of his parishioners. This question was drawn up in general terms by the S. C. C., and it was decided that such priests, having no parish of their own, might validly marry their subjects in the parishes of other priests, in spite of the "*Ne temere*" decree.

The priest from the other town was therefore entirely mistaken in appealing to this decision of the S. C. C. He appears to think that the old regulations of the Council of Trent are still in force on the subject of marriage, according to which a parish priest could validly marry his parishioners anywhere. The rector of X acted both correctly and courteously, in giving unasked the delegation that enabled his confrater to marry the couple in the church at X.

II. At this point, however, a peculiar difficulty arises in con-

nection with the case. This priest declared decidedly that he did not need any delegation, being the parish priest of the people whom he was about to marry. These words were spoken with assurance, and seem to imply an absolute refusal to accept the delegation offered. He apparently united the couple on his own authority, and the rector of X, not quite knowing how to act, let him do as he liked.

Two questions present themselves: the *quaestio juris:* (a) Is the acceptance of the delegation on the part of the priest delegated to perform the ceremony essential to the validity of his action? and the *quaestio facti:* (b) Did this priest really not accept the delegation from the rector of X, who was competent to give it?

(a) Authorities on Canon Law do not all answer the first question in the same way. The chief priest in any parish, in virtue of his office, and quite irrespective of any arbitrary acceptance or refusal on his part, possesses the faculty to solemnize marriages. Whether he will or not, his presence confers upon the declaration of consent that he obtains without compulsion (*Ne temere*, IV. § 3) from the man and woman the necessary sanction, so that they enter into a true Christian marriage. If a priest is not in charge of a parish, he must obtain the faculty of *testis autorizabilis* before the wedding, and he must do so by requesting the priest who is competent to act to delegate to him his power. Before a legal tribunal no refusal to accept the power delegated can affect the matter at all, if the person receiving is canonically dependent on the person giving the delegation; the former has no power *de jure* to refuse it, therefore there is required no acceptance.

If, for instance, a Bishop delegates some particular priest to perform all the marriages in a certain district, he is *eo ipso* com-

petent to officiate in virtue of the Bishop's orders, and he cannot destroy this canonical qualification even by a positive refusal to accept the delegation. As far as I know, all canonists agree up to this point. (Cf. Wernz, *Jus Decretalium,* IV. p. 287, n. 218, and the authors, early and recent, quoted in that passage.)

If, however, the priest receiving the delegation is not canonically dependent upon the priest giving it, then, according to the general principles governing transference of privileges, powers, and authority from one person to another, acceptance on the part of the person delegated is an essential condition for the validity and force of a marriage delegation. This view is taken by Wernz (*l. c.*); he defends it on theoretical grounds and also refers to the authority of the S. C. Concilii in the *Causa Neapolitana seu Puteolana,* 3 Julii, 1734 (given in Richter, *Concil. Trident.*, p. 230, etc., n. 58), in which the third reason given for the decision is: "*Vicarium Puteolanum non acceptasse licentiam sen delegationem parochi Rugiani, sed illa uti noliusse, adeo ut, ubi etiam curatus Rugiani potuisset tunc temporis dici parochus Mariae, matrimonium non esset validum, quia acceptatio delegationis est conditio pro ejus validitate omnino necessaria.*"

Wernz quotes in support of his view Sanchez, Schmalzgruber, and Rosset; it is adopted also by the following more recent writers, — Aichner (*Compendium* j. e. § 192, etc.), Binder-Scheicher (*Praktisches Handbuch des katholischen Eherechtes,* p. 172), Wouters (*Commentarius in decretum "Ne temere,"* p. 63), Leitner (*Lehrbuch des katholischen Eherechts,* p. 328, etc.) and others.

Scherer (*Handbuch des Kirchenrechts,* II. pp. 204, n. 193) takes another view of the matter. It is true that he makes the validity of the delegation depend upon the delegate's knowledge

of it, but he adds, on the point whether the formal acceptance of the delegated power is essential: "Consistency seems to require a negative answer." No one can deny this who adopts Scherer's view of the delegation as follows (*l. c.*, p. 203): "Strictly speaking, a delegation confers upon the man and woman about to marry the permission to make their declaration of consent before the delegate instead of their proper priest or ordinary." If this definition is adequate, then undoubtedly not only the acceptance of the delegation, but even the knowledge of its existence, ceases to be essential to the validity of the delegate's action. Scherer quotes Engel (*Collegium universi juris can.*, l. VI. tit. III.) in support of his opinion; and Engel shows much skill in refuting the arguments of his opponents, but nevertheless the preponderance of authorities seems to be in favor of regarding acceptance of the delegation as a condition essential to its validity.

(b) The last question to consider is whether the strange priest accepted the delegation given him by the rector of X, or not. His categorical statement, "I need no delegation," seems to imply a rejection of it. It is, however, only the expression of the speculative mistake which the priest was making. The practical intention, which all the circumstances prove him to have possessed, was to marry his parishioners in a valid and correct way. Such an intention is quite compatible with a mistake. He came with his parishioners and asked the rector of X for permission to marry them in that church. He declared the delegation given him to be unnecessary, *ex ignorantia invincibili* or *vincibili*, but this does not affect the objective fact that he was really delegated and knew that he was, and intended to secure for his parishioners a valid and regular marriage. Even according to the stricter view this would suffice to render a marriage *per delegationem* valid. An

express and formal *acceptatio delegationis* cannot be proved to be indispensible, either from any positive regulations or for theoretical reasons. The theory that an acceptance of the delegation is unessential is certainly a probable one, and in any case we may fall back on the consoling principle: "*in dubio standum est pro valore actus.*" There is no reason at all for questioning the validity of the marriage.—Dr. W. Grosam.

LIX. WINE WITHOUT WATER AT MASS

A clumsy server let the water-cruet fall at the offertory, and its contents were wasted. He went into the sacristy, but could not find the water-bottle to refill the cruet. He went back to the altar, and told the priest, who was saying Mass, what had happened, and he, regarding the *defectus aquae* as unimportant, consecrated the wine without it. *Quid ad casum?* In the *Decretum pro Armenis*[1] it is explicitly stated that at the institution of the Holy Eucharist our Lord used a chalice containing wine mixed with water: "*Juxta testimonia sanctorum Patrum ac Doctorum Ecclesiae pridem in disputatione exhibita creditur, ipsum Dominum in vino aqua permixto hoc instituisse sacramentum.*" With regard to the above-mentioned *testimonia Patrum et Doctorum,* it is enough to point out that the earliest ecclesiastical authors speak of the mixed chalice, *calix mixtus,* ποτήριον κεκραμένον.

In his well-known account of the Christian observance of Sunday, Justin Martyr says (*Apol.*, I. c. 67): Ἄρτος προσφέρεται καὶ οἶνος καὶ ὕδωρ. Similar language is used by Irenæus (*Adv. haer.*, V. 2, 3) and St. Cyprian (*Ep.* 63 *ad Caecil.*, n. 13).

The third provincial synod of Carthage in 397 gave instructions (can. 22), "*ut in sacramento corporis et sanguinis Domini nil amplius offeratur quam ipse Dominus tradidit h. e. panis et*

[1] Denzinger-Bannward, *Ench. symb.* 698 (593). The instruction on the Sacraments, given in the decree, is not a *definitio de materia et forma sacramentorum*, as many suppose, but only a practical rule, claiming, however, to have full authority. It is taken almost word for word from St. Thomas's *opusculum* "*de fidei articulis et septem sacramentis*" (*l. c.*, 695, note 1).

vinum aqua mixtum." The second synod of Trulla (the so-called Quinisexta) in the year 692 threatened Armenian Bishops and priests with removal, if, like the Monophysites, they consecrated unmixed wine. The symbolical reason for the addition of water to the wine is given in the *Decretum pro Armenis, l. c.* "*quia hoc convenit dominicae passionis repraesentationi. Inquit enim beatus Alexander papa quintus a beato Petro: In sacramentorum oblationibus, quae intra Missarum solemnia Domino offeruntur, panis tantum et vinum aqua permixtum in sacrificium offerantur. Non enim debet in calicem Domini aut vinum solum aut aqua sola offerri, sed utrumque permixtum: quia utrumque, id est, sanguis et aqua, ex latere Christi profluxisse legitur.' Tum etiam, quod convenit ad significandum hujus sacramenti effectum, qui est unio populi christiani ad Christum. Aqua enim populum significat, secundum illud Apocalypsis: . . . 'Aquae multae . . . populi multi* (*Apc.* 17, 15). *Et Julius papa secundus post beatum Sylvestrum, ait: 'Calix Dominicus juxta canonum praeceptum vino et aqua permixtus debet offerri, quia videmus in aqua populum intelligi, in vino vero ostendi sanguinem Christi. Ergo cum in calice vinum et aqua miscetur, Christo populus adunatur, et fidelium plebs ei, in quem credit, copulatur et jungitur.'*" With reference to this important symbolism the *Decretum pro Armenis* contains a strict command: "*Decernimus igitur, ut etiam ipsi Armeni se cum universo orbe christiano conforment; eorumque sacerdotes in calicis oblatione paululum aquae, prout dictum est, admisceant vino.*" The Council of Trent (Sess. XXII. c. 7) gave almost the same reason for renewing this order: "*Monet deinde sancta Synodus, praeceptum esse ab ecclesia sacerdotibus, ut aquam vino in calice offerendo miscerent, tum quod Christum Dominum ita fecisse credatur, tum etiam quia e latere ejus aqua simul cum sanguine*

exierit; quod sacramentum hac mixtione recolitur, et cum aquae in apocalypsi beati Joannis populi dicantur, ipsius populi fidelis cum capite Christo unio repraesentatur" (Denzinger-Bannwart, 945 (822). The corresponding can. 9 (*l. c.* 956) contains a similar statement.

Taking into consideration this command so often repeated by the Church, based as it is on our Lord's own example and on deeply significant symbolism, theologians agree in saying that it is an *obligatio sub gravi* to mix the wine with water at Mass. The only difference of opinion is regarding the character of the law, which some maintain to be a *praeceptum divinum*, and others only a *praeceptum ecclesiasticum.* Cf. Müller (*Theol. mor.*, III. p. 213), Lehmkuhl (*Theol. mor.*, II. n. 118), Göpfert (*Moraltheologie*, III. 52), Génicot (*Theol. mor.*, II. n. 172), Bucceroni (*Instit. teol. mor de euch.*, n. 7), and Noldin (*Theol. mor.*, III. n. 109). The last-named says plainly: "*Tam grave theologis videtur esse hocce praeceptum, ut nullum admittant casum, in quo licitum sit celebrare, si praevideatur defectus aquae.*"

In the case presented to us the priest was therefore too lax. On hearing what the server said, he should not at once have been satisfied that no water could be obtained. It was his duty to send the server to fetch some (it could not have been difficult to get a little water), and meantime to wait quietly. If the *interruptio missae* seemed likely to last unduly long, he might have continued the Mass, and have added the water, that had been fetched in the meantime, *ante consecrationem.*—Dr. Johann Gföllner.

LX. NEGOTIATIO FORBIDDEN TO THE CLERGY

(1) Are the clergy allowed to speculate on the rise and fall of shares?

(2) Are they altogether forbidden to have anything to do with business on the stock exchange?

(3) If they have in their possession shares that stand at a high price, may they not sell them and buy others at a lower price, and so make a profit?

According to Canon Law a cleric is forbidden to have anything to do with any *negotiatio quaestuosa* (as opposed to *negotia oeconomica*).

By a *negotiatio quaestuosa* is understood any business in which things are bought and sold again for profit, either in the same condition or altered by the hired labor of others. A priest may therefore sell for profit things that he possesses or has bought for his own use, even if they are not superfluous. He also may buy things, and sell them for profit, after they have been altered or improved, provided the whole transaction is not unbefitting to one in his position. But he must not employ others to alter and improve the things before selling them for a higher price than that at which he bought them, because then he would be carrying on a business by means of others.

This prohibition applies to all who have received major orders, to all holding benefices, even if they have not received major orders, and to all regulars. It is a binding rule, but admits of trivial exceptions, so that certainly only a venial sin is committed if only little business transactions take place, with objects of small

value. It is not a grievous sin if some more important business is transacted once, or even now and then. Whether the clergy are allowed to take part in joint-stock companies or in stock-exchange business, has been frequently discussed.

(1) It is certainly permissible to buy bonds issued by state or town, and to take interest upon them, for this is simply investing money at interest.

(2) It is certainly permissible to take bonds of joint-stock companies, because, in this case also, it is equivalent to lending money at interest. If the company exists for some bad object the question will arise as to whether it is right to cooperate with it.

(3) It is a very debated point whether the clergy may take shares in a joint-stock company. Many regard it as altogether inadmissible for the clergy to take shares, because thus they take part in a money-making business. Others distinguish between industrial undertakings and trading companies; they think it wrong for the clergy to take shares in the latter, but they consider it permissible for them to take shares in industrial companies, such as mining, railways, and tramways. A double difficulty is very apt to occur in the case of many industrial undertakings, (a) that in them a man carries on a business through some one else, and (b) that these undertakings may generally be regarded as trading companies. Wernz, for instance (III. n. 219), considers a watch factory to be a trading company. On this there are several decisions of the S. C. Off. to be taken into account. According to a decree dated November 17, 1875, it is permitted for the clergy to buy shares in railway and other similar companies (this probably includes trolley lines, steamship and canal companies). A decision dated April 1, 1857, had authorized

Bishops to give such permission "*de propria persona tantum*"; but of course it was not intended that endowments could be applied to such purposes, or that the clergy should borrow money in order to take shares. As to bank shares, a decision of April 15, 1885, states: . . . "*non esse inquietandas personas ecclesiasticas si emant actiones seu titulos mensae nummulariae, dummodo paratae sint stare mandatis S. Sedis et se abstineant a qualibet actione dictarum actionum seu titulorum et praesertim ab omni actu, qui dicitur dei giuochi di borsa.*" A priest may therefore hold shares in a bank, but he may not take any part in the management, or attend general meetings. A difficulty is likely to arise here from the fact that many banks are connected with stock-exchange speculations and other forbidden proceedings.

It is permissible to take shares in an insurance company, provided that they do not serve any bad purpose. The clergy may also take shares in a company formed to build a Catholic clubhouse or to start a Catholic paper, as in such cases the object of the company is not to make money, but to promote some good end.

(4) Gambling on the stock exchange is forbidden to the clergy, as appears from what has already been said. Therefore to buy bonds and sell them, speculating on their rising or falling in value, especially in time bargains and such matters, in order to make a profit, is *negotiatio quaestuosa*, and therefore forbidden.

In answer to the questions submitted to us, we may reply: (1) The clergy are not allowed to carry on any speculations in shares, in the sense just stated, because they are stock-exchange speculations.

(2) It is not stock-exchange business, but stock-exchange speculation, that is forbidden.

(3) The clergy may certainly sell shares that stand at a high price and buy others of lower value with a view to making a profit; or they may buy shares that stand low, in hopes of their rising in value. This does not amount to speculation. The clergy, however, are advised to make only safe investments, in order not to lose their own savings, and not to risk money derived from church property, which ought to be applied to good purposes.—Dr. Goepfert.

LXI. JURISDICTIO SUPPLETA

A secular priest, possessing the usual diocesan faculties *ad triennium,* but holding no other official position, is appointed, conjointly with other priests, to act as *confessarius* at a students' institute. In the full belief that his jurisdiction has not yet expired, he hears a number of confessions, and discovers only some days afterwards that he has made a mistake, for his jurisdiction expired some weeks previously.

Question.—Were the absolutions that he gave valid?

Answer.—This is undoubtedly a case of *jurisdictio suppleta in errore communi cum titulo colorato.* The pupils at the institute could not possibly be aware that the priest's jurisdiction was at an end, nor could any one else know it, and consequently there was certainly an *error communis,* and the other condition, *viz.,* the *titulus coloratus,* was also present. The bestowal of any office with which the duties of a *confessarius* are intimately connected, such as an appointment to be parish priest, proves a *titulus* to exist, and a direct and formal appointment to be a confessor must do so still more. If the appointment to any such office is null and void, owing to some secret flaw (simony), or has been subsequently revoked, by the will of a superior, there is a *titulus coloratus* so called to distinguish it from a *titulus existimatus,* which is a *titulus* never conferred at all by the ecclesiastical authorities, but only believed by the faithful to exist, as when a parish priest has been appointed by the state.

As the secular priest in question was directly and formally ap-

pointed confessor to the institute by the episcopal Ordinary, the Church furnished his jurisdiction, according to the *titulus coloratus* which the ecclesiastical authority had bestowed upon him. Many authors extend this furnishing of jurisdiction also to a *titulus existimatus.*

There is a further circumstance connected with those penitents who perhaps confessed only a *materia libera* (venial sin, or grievous sin already confessed). Since the issue of the decree *"Cum ad aures"* by Innocent XI on February 12, 1679, it has not been lawful for priests without approbation and jurisdiction to pronounce absolution even from venial sins, but the validity of such an absolution is still regarded as at least *speculative probabilis.* According to the general teaching of theologians, the Church will certainly supply any jurisdiction that may be wanting *in casu jurisdictionis speculative probabilis.*

The question of supplied jurisdiction *in errore communi* is answered by Canon 209 of the Code which states: "In common error or in a positive and probable doubt both *juris* and *facti* the Church supplies jurisdiction for the external as well as the internal forum." As the reader will notice, this new law makes it unnecessary to pay attention to the *titulus coloratus* or any other.

LXII. SEAL OF THE CONFESSIONAL IN COURT

A lawyer consulted a priest regarding the following case:

Some time ago a certain person—whom we will call Anna—died, and in her will bequeathed all her property to a farmer in whose house she had for many years received very kind hospitality. She did not mention her relatives in her will, but they are now questioning its validity and declaring that she was in her dotage and incapable of making a will at all. The farmer, however, who has inherited the property, says: "Anna was not altogether weak in her mind, for she often went to confession and Holy Communion; you have only to ask her confessor, our parish priest." "It is my duty," said the lawyer, "to defend the will, and I do not know whether to call the priest as witness or not. It would be unpleasant if he refused to answer before the Court, and pleaded the seal of the confessional. What would you do?" The priest whom he was consulting hesitated a little and then replied: "I should refuse in court to give any answer at all with reference to the confessional."

Is this priest's opinion correct?

According to Müller, *Theol. Mor.*, III. § 169, *Sigillum sacramentale generatim omnia comprehendit in confessione manifestata, quorum revelatio cederet in odium Sacramenti et gravamen poenitentis.* A priest therefore must never reveal the sins confessed, nor their circumstances and causes, nor the penance imposed, nor any natural infirmities and tendencies in his penitent, *e. g.*, a tendency to scrupulosity, for these things

become known to him in the confessional. The fact that a penitent has made a confession to a certain priest cannot be a secret. The only case in which a priest ought not to state that he has heard a confession is if such a statement would lead others to infer that the penitent had committed and confessed some particular sin. There is no reason to fear anything of the kind in the case under discussion, where no particular sins, but the general intelligence of the deceased penitent, is in question.

What ought the priest to say if the judge asked him directly to give his opinion of Anna, and to say whether he considered her weak-minded or responsible for her actions? He would then be required to state whether, on the ground of her confession, he regarded Anna as capable of sinning and of receiving absolution.

Without betraying any secret, he could answer this question affirmatively, since he had allowed Anna to receive Holy Communion, and he would not have done so, had he not been able to absolve her, on account of her weak intellect.

Such a statement would not break the seal of the confessional, and would not be detrimental to the dead woman. The priest whom the lawyer consulted, however, said that he would give no answer in court regarding the confessional. He might perhaps allege, as his justification for this view, that an affirmative answer on the part of the confessor might possibly *cedere in odium sacramenti,* should the party contesting the validity of the will lose their case as a result of his statement.

They might possibly say: "If the priest does not observe the secrecy of the confessional before a court of law, I will not go to confession again." Such unjust and malicious remarks might be made afterwards regarding the Sacrament of Penance; but if there were no reason to fear any such observations, the priest might

make his statement *tuta conscientia.* The judge would have no power to compel him to speak, for he is protected by state laws which hold that what is confided to a priest in confession or under the seal of secrecy is an inviolable official secret and he can give no information with regard to it.—Petrus Dolzer.

LXIII. COMMUNION ON HOLY SATURDAY

A parish priest was called up early in the morning on Holy Saturday and told that a strange gentleman wanted to go to confession. He hurried to the church and heard the confession, and then, seeing no one else about, prepared to go home again. The stranger, however, who was certainly not well acquainted with the rubrics of Holy Saturday, went up and asked the priest to give him Holy Communion. The latter, being well versed in all the rules of the rubric, knew that on Holy Saturday Communion may be given only after the High Mass (*S. R. C. die 7 Sept.*, 1850), or during it, after the celebrant's Communion (*S. R. S. die 22 Mart.*, 1806, *die 23 Sept.*, 1837). (Canon 867 of the new Code states that on Holy Saturday Holy Communion cannot be given except at the Holy Mass or immediately afterwards.)

He drew the stranger's attention to these regulations and said he could not give Communion before ten o'clock. The man replied that he was obliged to leave by the next train, and if he could not receive Communion at once, it was very doubtful whether he would be able to do so at all that Easter.

The priest soon made up his mind. On the one hand was the strict obligation of Easter Communion, that is *quoad substantiam* a divine command, and a general law of the Church, and on the other the decisions of the Congregations. He went into the sacristy to put on his rochet and stole, in order to give the stranger Communion, but meanwhile an old woman went up to the Communion rail and knelt beside the man. She knew well enough that it

was not the custom in that church to give Holy Communion on Holy Saturday. What was the priest to do?

Simply to pass her by and behave as if she were not there would be a very delicate matter. People would be apt to think that the priest was willing to give Communion to the elegant stranger but not to the poor old woman. It would not do to admonish her, for both the place and the occasion were much too sacred. To give an explanation to the people who might be present and to the old woman, to draw their attention to the rules of the Church, and to state the reasons urged by the stranger in support of his request for Holy Communion,—all this would be a quite unusual proceeding, and not one to be recommended.

We must of course respect the decisions of the Sacred Congregation of Rites, but like any other laws they may *per epikiam* lose their binding force. The reasons enumerated above, to which one or two might be added, make an *epikia* at least probable.

The priest ought therefore to give Holy Communion to the woman, but take care to give subsequently a thorough explanation so as to avoid a similar occurrence in the future.

LXIV. CONFESSIONS OF THE CLERGY

Two points seem to us very important, if matters are to be improved, *viz.*, the place where the confession is made, and frankness on the part of the penitent.

Let us consider first the need of frankness. Confidence begets confidence, and what comes from the heart goes to the heart, and calls forth the right sentiments and the right words. It is not easy for every one to speak frankly to another, even to a confessor. We all like to keep our innermost thoughts secret, and to confess them frankly is more difficult to one who is otherwise on terms of friendly intimacy with his confessor. Nevertheless he must do so, if both confessor and penitent are to do their parts successfully and to their own satisfaction. We require frankness of our penitents. What can we find to say to a person who always accuses himself of trifles that are as a rule things which are scarcely matter for the Sacrament? Can we rouse him to the pursuit of virtue? This is often a difficult task if he lives an ordinary life, doing nothing particularly bad or particularly good. A priest is in a similar case who always accuses himself of having said his prayers without devotion, of having committed small faults in the administration of the Sacraments, and of having given way to vain thoughts, but never mentions such things as envy of his confratres, neglect of important duties belonging to his position, such as carelessness about study, indifference to his schools and teachers, want of zeal in instructing his people, etc. A confessor, if he felt that he was being treated with confidence, would often find it possible to single out some point as a subject for admonition.

I do not mean to imply that priests as a rule make bad preparation for confession, but that by force of habit they are apt to make mistakes and omissions, which they almost overlook, if they are not accustomed to be frank with their confessor.

If a priest is in all important matters a faithful servant and an honest steward,—and this is generally the case,—there are still many ways in which he may attain greater perfection. Some one perhaps feels in his heart a real desire to practise some virtue or to impose upon himself some mortification; why does he not speak of this desire to his best friend and counselor in the confessional? It would give the confessor an opportunity for giving useful advice. Confession should be not only a means of purification, it should be in the highest degree a means of sanctification. I must admit that it is not easy to be frank. The difficulty was felt even by St. Teresa.

Frankness is essential for one who really strives to follow Christ, as it is no easy matter to guide oneself to perfection. Man must be guided by man. We often say this to others, and they may retort: "Physician, heal thyself; do thyself what thou dost counsel others to do." Imagine a physician who would write a prescription after scarcely seeing the patient. If he is to treat him successfully, he must begin by making an exact diagnosis of his case, and asking the sick man to explain cause and symptoms of his malady. A confessor can do a great deal to encourage a confrater who seems reserved, and to help him to make not only a good confession, but one that will be really helpful to him. All the banal and meaningless phrases will then fall away of their own accord; they are things to which the penitent pays hardly any attention.

If we are to promote frankness and give an opportunity for

instruction, encouragement, and admonition, we must be careful about the place where the confession is made.

A young priest told me lately how he and his friend managed. They lived in a large town with a very mixed population. Every three or four weeks they went to the priest of another church, and he generally guessed what they came for, and went into an adjoining room. First one went in and made his confession, and then the other. There were no admonitions, corrections, or instructions at all. Immediately after their confessions, the confessor called to his servant to bring refreshments, and a comfortable gossip followed the brief confession.

It is not a good plan to make one's confession in the priest's room; it is far better to make it in the church or sacristy. What does it matter if there are other people in the church? There is no harm in their seeing priests go to confession. Priests are frail mortals like themselves, and to see them confessing their sins and shortcomings to God's representative tends to edification. If any one objects to being seen, let him choose the sacristy. In the seminary all of us, alumni as well as young priests, had to go to confession every week at the same time and place as other people. One or two objected to it, but it had to be done, and certainly the plan had its advantages.

Many priests make it a rule to spend some time in silent recollection before the tabernacle, and then to go home, without entering the confessor's house. This can easily be done in a town or village where there are several churches and priests. Others make their thanksgiving in the church and then visit their friend and confessor. There can be no harm in this, especially if they have come some considerable distance, and need refreshment for soul and body.

In a time like the present, when shallowness and worldliness prevail, we priests must strive above all things to be "good salt." A good confession on the part of a priest will certainly help the salt to retain its savor.

LXV. WHEN DOES CONTRITION SUFFICE AD SACRA INSTEAD OF CONFESSION?

Tullius, a priest, is often troubled by conscientious doubts and regrets having no confrater to whom he could make a confession before each celebration or administration of the Sacraments, when he is tormented by scruples. What advice should a careful confessor give him?

(1) As long as he is not morally certain that he is guilty of mortal sin, contrition alone, without the purpose of confession, suffices, even to allow him to say Mass.

(2) If he is only somewhat doubtful, he is not even strictly bound to make an act of contrition.

(3) If he doubts whether, in spite of earnest effort, he has succeeded in making a good act of contrition, he must not disturb himself. *Contritio existimata*, in conjunction with the reception of the Holy Sacrament, justifies him, and no sacred function would be a formal act of sacrilege, since he had a *certitudo conjecturalis* (which suffices) regarding the recovery of the state of grace that possibly he had lost.

(4) For administration of all the Sacraments *contritio saltem existimata* would be sufficient, even if there were a *copia confessarii* and his *mortale* were certain.

(5) No mortal sin is involved in discharging all the duties of a priest even *in mortali*, with the exception of celebration and administration of the Sacraments. There is a divergence of opinions regarding the things that involve a venial sin; for instance,

recitation of the Divine Office, private bestowal of the priestly blessing, especially *sine paramentis*. A priest certainly does not sin grievously by performing the marriage service in this condition.

(6) It is not even a venial sin for a priest in a state of mortal sin to administer the Sacraments, such as baptism and Viaticum, in cases of urgent need, where there is no time for him to make an act of contrition. An opinion to the contrary cannot be maintained.

(7) It is regarded by St. Alphonsus, Gury, and Marc a grievous sin for a priest *in mortali* to give Holy Communion, but Lugo and others argue with great probability that it is only a venial sin, and we need not hesitate to follow them. A mere *tractatio Sanctissimi*, even *immediata*, is held by very many strict authorities to be *veniale*, and so there seems no reason why this should not be extended to the administration of Holy Communion. The administration of the other Sacraments *in mortali* is, strictly speaking, a grievous sin only because they are produced *in mortali* at the moment of their administration, but in the case of the Eucharist the transfiguration must be distinguished from the mere distribution.

(8) A celebrant should go to confession before saying Mass, if he is morally certain of having committed mortal sin. This, like the analogous rule requiring the laity to go to confession before communicating, is, according to the more correct view, not merely an ecclesiastical but a divine command. Only reasons of urgent necessity, such as *confectio viatici, infamia, scandalum, sacrum die de praecepto, si sacerdos ad id tenetur*, can justify him in celebrating with *contritio* (*saltem existimata*) where there is no *copia confessarii*. If a priest is not bound *vi*

muneris to say Mass, only the fear of *infamia* in case he omits to say it can justify his doing so; mere *admiratio* is no excuse, but it is almost invariably connected with *infamia, sinistra locutio,* even on ordinary days. Marc is right in not regarding *paupertas sacerdotis* as a sufficient excuse, unless "*valde gravis*" (*Inst. mor.*, A, II. p. 102, n. 1550 in ed. XIII.). The fact of the existence of several *fundata* is not an excuse. If the priest, after beginning Mass, remembers some grievous sin committed since his last confession, it will scarcely ever be possible for him *in praxi* to break off before the consecration, or to make a confession to one of the priests who may be present, although, should exceptional circumstances render this feasible, it would be his duty to do so (cf. the Mass rubrics).

The presence of only a *sacerdos juvenis affinis* is not to be interpreted as equivalent to a want of *copia confessarii,* and therefore the priest in question is not excused on this ground from the obligation of confession. Whether an excuse is afforded by *verecundia gravis,* unconnected with the confession of a mortal sin and due to purely external causes, is a disputed point. Such *verecundia* might exist if an uncle had to confess to his nephew (cf. Noldin, *Th. mor.*, III. no. 141). The more lenient view is probably correct. A similar case would occur if the only priest within reach were intoxicated, or very unwilling to hear his confrater's confession, or on such bad terms with him that it would be scarcely possible to insist upon confession, or if the penitent, by the very fact of going to confession to him (assuming that he could not do so secretly), would expose himself to *infamia.*

A confessor asked whether a priest who had sinned grievously could receive absolution, when he could not, at his confession,

resolve firmly, in case of a *relapsus*, to confess to the only priest within his reach before celebrating Mass. The Penitentiary answered: "*Dilata*," thus probably indirectly admitting that exceptional reasons justifying his action might possibly occur.

(9) If absolute necessity forces Tullius to celebrate without confession, he is bound by the rules of the Council of Trent to supply the omission as soon as possible. This is generally taken to mean within three days. If he wishes to celebrate Mass again on the following day, he must not of course wait three days, but must go to confession before his next celebration. If *in necessitate* he has celebrated without contrition, St. Alphonsus and Marc consider him bound to go to confession as soon as he possibly can; others with more reason think this unnecessary, as the object of the command has been to a great extent frustrated. If he has said Mass in spite of there being no absolute necessity for his doing so, and so has plainly acted sacrilegiously, according to the Council of Trent, he is not positively bound to go to confession at once, provided he does not mean to celebrate Mass again.

(10) This command does not apply in analogous cases to laymen, who in case of necessity have communicated with or without contrition: they might, as far as they are concerned, wait until their next Easter confession, — *probabilius;* the rule of the Council of Trent applies only to priests who wish to say Mass.

(11) Finally, it is a matter of course that Tullius must not omit to say Mass because of sins that he has forgotten to confess. It depends upon the state of his conscience whether the rules laid down for scrupulous persons are applicable to him.

(12) It may further be pointed out that the rubrics in the missal forbid a priest "*ad judicium confessarii*" to say Mass on

the day after committing certain sins that lead to a *pollutio graviter culpabilis,* such as would result *ex nimia crapula,* and the same would naturally apply to a *copula.* A transgression of this rule, without a dispensation from the confessor, would be only a venial sin, and in case of necessity permissible. What has been said may help Tullius to order the affairs of his conscience.

LXVI. A NEW OPERATION IN CHILDBIRTH

The means employed hitherto to overcome difficulties in childbirth, especially in cases of contraction of the pelvis, have been: prevention of conception, abortion, induced premature birth, Cæsarean section, craniotomy, perforation, or cephalotripsy. Catholic moral teachers have always taken a decided attitude with regard to these proceedings. They have condemned all methods of preventing conception. Only under very difficult circumstances may "facultative sterility" be advisable (Capellmann, *S. Poenit.*, 16 June, 1880. Cf. Lehmkuhl, II. n. 851; Noldin, *de sexto praecepto*, n. 69; Goepfert, *M. Th.*, III. n. 278). Abortion, the artificially produced expulsion of the fœtus at a time when it is not yet capable of independent existence, is strictly forbidden. Still more strictly is it forbidden to use any of the operations that directly cause the child's death, such as perforation, craniotomy, or cephalotripsy. Medical men are beginning to see that these operations are unjustifiable, although they do not think that they can altogether give up performing them. According to the teaching of Catholic moralists it is permissible to bring about a premature delivery at a time when the child is capable of independent existence, though it be weak when born. The Cæsarean section is also allowed, except in cases where it would be of such danger to the mother as to be practically equivalent to killing her. Modern surgery and the use of antiseptics have made this operation less dangerous than it used to be, if performed in good time.

Quite recently there has been performed another operation which

seems likely to be successful, *viz., hebosteotomy*. The bone of the pelvis is cut through at the *os pubis*, so that the pelvis is enlarged and a normal birth can take place. The operation does not involve any opening of the womb, but is performed by means of a very fine saw, resembling a needle, and it does not cause any very serious injury to the mother, so that no special danger or disastrous results follow it. It seems particularly useful in cases where it is impossible to induce a premature birth, or when the right time for doing so has passed. Surgeons consider that the operation can be performed privately, and that there is no need to transport a patient to a public operating room. We may therefore hope that it will result in saving the life of many children, who would otherwise perish at their birth. If my hypothesis is correct, I see no objection, from the point of view of Catholic morals, to the performance of this operation.—Dr. Goepfert.

LXVII. SCRUPULOSITY

A young man of about thirty came to a confessor and confessed, with every sign of contrition, many grievous sins, especially many very serious ones *contra VI*. The confessor heard him patiently, asked the necessary questions, warned and admonished him *suaviter*, pointed out the consequences to body and soul, and then absolved and dismissed him. Some weeks later the penitent returned to the confessional and thenceforth came frequently, showing himself to be completely changed. The priest's exhortations had sunk deep into his heart, and the grace of God worked a miraculous conversion. Yet at every confession he said: "Father, whenever I think of my past life, I am filled with fear; I never have a happy hour, I have no peace at all." *Quid respondendum?*

If the confessor is satisfied that his penitent has confessed all the formal mortal sins that he remembered, after a careful examination of conscience, — if there is moral certainty *de validitate* of his previous confessions, and if any that were not valid have been made good, he should begin by telling the penitent that his disturbed state is the work of the devil. Our adversary does all in his power to drag a soul that he considered his own back from the right path, and in order to discourage a poor mortal, and shatter his confidence in God, he has recourse to disturbance and anxiety of mind, and tortures him with doubts as to God's mercy. The confessor ought to urge his penitent to pray earnestly, and he should strive to strengthen his confidence in God.

None of us, not even the most pious priest, knows *utrum amore*

an odio dignus sit (*Eccles.* ix, 1), and even the Apostle of the Gentiles had to acknowledge: "*Nihil mihi conscius sum, sed non in hoc justificatus sum: qui autem judicat me, Dominus est*" (1 Cor. iv, 4). It is actually a dogma of our holy religion, that no one knows with certainty that he is justified (*Trid. sess.*, VI. cap. 9, in Denzinger, n. 684). Therefore we must be satisfied with more or less moral certainty, which varies in degree according to our power of ascertaining whether we have complied with all the requirements and conditions imposed by God. We have much reason to thank Him for this *incertitudo;* it preserves us from carelessness and reckless presumption, and sets a barrier to our self-confidence and boastful self-complacency.

After a penitent has done his best to obtain reconciliation with God, he should set aside all disquieting thoughts and look with confidence to the future.

To elucidate the point under discussion as far as possible, I may add that, in making the preceding statements, I have had in view a sinner who has committed unusually grievous sins during a period of many years, and now, in spite of having confessed them, enjoys no peace of mind. If he is incessantly troubled by fears *ob confessiones peractas*, and questions their validity, or if he is in constant dread of sinning, the *regulae pro scrupolosis* of course hold good for his confessor.—Prof. Gspann.

LXVIII. METUS REVERENTIALIS AS IMPEDIMENT

Eva, a good, pious young girl, had been brought up by her uncle, who practically forced her to marry Cæsar. She was utterly averse to the marriage, and even declared in confession that she agreed to it against her will, not daring to thwart her uncle. The wedding took place, and in due time a child was born. From the wedding-day onwards Eva continued to be unhappy, and in course of time she refused her husband the *debitum,* because she had inwardly never consented to the marriage, and persisted in refusing her consent; moreover her confessor regarded her marriage as invalid. In order, as she thought, to make things easier for herself, she took a vow of chastity, and lived with her husband as his sister. He is, however, in danger of incontinence; and the question arises whether Eva, in spite of her strong repugnance, is bound now at any rate to consent to her marriage with Cæsar, in order to avert this *periculum conjugis?*

In a theological periodical of wide circulation in Italy, this question received merely "Yes" in reply. The Roman weekly, "*Il Corrispondente del Clero,*" was not satisfied with this decision, and commented unfavorably upon it. The first point chosen for criticism was that the journal in question laid down too decidedly that "*metus gravis dirimit matrimonium jure naturali et ecclesiastico.*" The *Corrispondente* declared that the theory that *metus gravis* could destroy a marriage also with regard to the natural law, is viewed by the best authorities merely as *probabilior.* Hence Mansella, in his work "*de impedimentis,*" simply says:

"ejusmodi impedimentum jure quidem positivo Ecclesiae matrimonium dirimit; sed probabilius etiam jure naturali irritum facit." As a reason for the greater probability he says that *metus, quantumvis gravis, libertatem non tollit, nisi quandoque rationis auferat exercitium.* Gury and others make similar statements.

The *Corrispondente* is still less satisfied with the following remark in the mentioned paper: *"Solus timor reverentialis erga parentes, avos, dominos, tutores, etc. non satis est ad irritandum matrimonium nisi cum additur timor gravis mali.* If, says the *Corrispondente,* these words only mean that the *timor reverentialis* must be *gravis,* there is no objection to them; but they seem rather to mean that there must necessarily be some other *metus* besides, or, at least, that the *timor reverentialis* could not be *gravis* to such a degree as to invalidate the marriage; and this is not true. On the contrary, it is precisely the *timor reverentialis* that may easily be *gravis,* especially in the case of a timid girl, unaccustomed to oppose her fosterfather. The famous Schmalzgruber teaches: *invalidum esse matrimonium . . . contractum a virgine cum juvene, quem illa aversabatur, ex mera reverentia in parentes, cum indignationis, exprobrationis, dure tractationis et similium incommodorum verosimili existimatione conjuncta.* We see from this that *reverentialis timor* can much more readily be regarded as *gravis* than ordinary fear.

After discussing these preliminary matters, the *Corrispondente* proceeds to answer the question. The writer believes that the other paper erred on the side of severity in the following passage: "Eva was, strictly speaking, not forced to marry, therefore she ought to be forced to consent." In stating the case, she is said to have been "practically forced," so her uncle must have brought some kind of compulsion to bear upon her, and she felt herself con-

strained to comply with his wishes. From her childhood she had been in the habit of obeying him, she was afraid of him, and could not make up her mind to refuse, for the first time perhaps, to do his bidding. She made no secret of her aversion to her future husband, even in the confessional, but her fear made her disregard the voice of her own conscience and yield to her uncle's pressure, so that she apparently consented to the marriage and lived *tanquam uxor,* though always with inward repugnance. When she grew older and found that even her love for her children did not enable her to overcome her dislike of her husband, she at last spoke frankly to him and refused, *ut supra;* and in order to have more strength, or a better reason for persisting in her refusal, she took a temporary vow of chastity. According to our opinion the confessor ought to point out to her the sins her weakness has led her to commit, so that she may recognize the dangerous state of her soul. He ought also to draw her attention to the unpleasant position of her husband and of her innocent children, and do his utmost to induce her to overcome her aversion; in short, he should use every means of persuasion, but we certainly cannot consider it right for him to force her, *i. e.* to lay upon her a solemn duty to consent to such a marriage. We are much afraid that she, having already suffered so much in consequence of her weakness, will only suffer far more in consequence of a demand on the part of her confessor that is too hard for her to comply with.

Finally the *Corrispondente del Clero* considers the last reason given in the other paper, *viz.,* Eva's vow of chastity, to be of no importance and no obstacle to her marriage, *nam vovit de re non propria.* Any reasonable person would certainly agree that her circumstances are such that a dispensation from this vow ought to be granted her, but it seems at least very doubtful whether she

has made a vow *de re non propria.* It is admitted that the marriage is not valid; what right could such a marriage give to the reputed husband to control his wife's freedom of action?

To sum up: Taking into account the scandal to which the dissolution of this marriage would give rise, and the position in which the husband and the children would be placed, we are of opinion that the confessor ought to use every means in his power to persuade Eva to give her consent to the marriage, but he must not compel her to do so. The *Corrispondente* concludes by saying that "this is only our opinion, which we desired to state in order to have it corrected, should it be erroneous."

LXIX. A PROTESTANT GODMOTHER

This is a case of a mixed marriage. The father is a Protestant who has hitherto kept his promise and has had his children baptized Catholics. When the youngest child was brought to be baptized, the Catholic godmother was prevented from being present, and so the father proposed that his own mother, a Protestant, should take her place. The priest objected to this arrangement, and so the child's father had it baptized by the Protestant minister. Did the priest act rightly?

Answer.—We must notice, in the first place, that the Protestant husband could not simply nominate his mother to represent the Catholic godmother; only the Catholic godmother herself could appoint a representative.

Assuming that the Catholic godmother had agreed to the proposal, and had appointed the child's Protestant grandmother to represent her and act on her behalf at the baptismal ceremony, the question arises, whether the Catholic priest was right in refusing to allow a Protestant to represent a Catholic.

If it had been proposed to have a Protestant godmother, we could settle the matter by reference to certain answers given by the Sacred Office on May 3, 1893, and June 27, 1900, to the effect that Protestants are not permitted to be godparents, and rather than accept them, it is better to administer baptism without godparents. According to an instruction issued in 1723: "A Catholic priest ought not to hesitate to reject non-Catholic godparents, because otherwise the baptism would be Protestant or schismatical in its administration."

With these decisions of the Sacred Office before us, it is difficult to see how to have a non-Catholic godparent could ever be advisable, though we ought not to conclude that under no possible circumstances there could be an exception and a reasonable excuse. But in the case under discussion there is no question of a non-Catholic godparent, but simply of the representative of a Catholic godmother. We are not justified in applying what is true of a godparent to his representative. Hence the Catholic priest's action must decidedly be condemned, especially if he could foresee its disastrous results; for the child, baptized a Protestant, was lost to the Church, and so would probably be any further children born of that mixed marriage. (Cf. Lehmkuhl, *Casus conscientiae*, II, cas. 24.)

LXX. MARRIAGE OF A WOMAN PREGNANT BY ANOTHER MAN

A country girl, named Laura, enjoyed an excellent reputation, and her uncle, eighty years of age, had assigned a considerable legacy to her in his will. Unhappily she had lately been seduced by a married man, who was regarded as very religious and most respectable. Finding herself pregnant by him, she resolved in her despair to save her honor, and secure her inheritance, by means of abortion. At that moment a chance of escape presented itself. A young man, named Norbert, having no suspicion of what had happened, offered to marry her, and wished their marriage to take place immediately. If Laura told him the truth, he would certainly withdraw his offer, and she would be left in her desperate plight. She therefore hurried to the neighboring town to consult Father Philip, who did not know her. She told him the whole story and asked whether in this case she might conceal her pregnancy and marry Norbert.

Question.—What should Father Philip reply?

The pregnancy of his bride by another man is undoubtedly a defect which not only renders the marriage *minus appetibile* to the bridegroom (to use the language of theologians), but is actually prejudicial to him; is, in fact, a *defectus nocivus.* St. Alphonsus says: "*Sicut peccat contra justitiam, qui alteri vendit merces noxias credenti bonas, ita a fortiori, qui cum pernicioso defectu vult matrimonium contrahere*" (l. VI. n. 864). A woman pregnant by another man by her marriage forces her husband against his will to receive some one else's child and bring it up

as his own. She causes his legitimate children to share their inheritance involuntarily with one who has no right to it. Moreover, she exposes her husband, her children, and herself to all the miseries of an unhappy marriage, for it is quite possible that he may eventually find out the trick that she has played him. In some states he might even obtain a dissolution of his marriage in the secular court, in defiance of the law of God and the Church. Therefore, as a rule, all authors hold that under such circumstances the woman is bound *sub gravi* either to refrain from marriage or to reveal her condition to her future husband. Father Philip explained all this fully to Laura, but she replied that marriage was the only way for her to save her reputation and her inheritance, to keep secret the sin committed by the partner in her guilt, to preserve his family life, and to protect the whole parish from public scandal. As to the dangers that the priest pointed out to her, she firmly believed that, under the existing circumstances, her husband would never find out what she had done, and that she would succeed in making good to him and his legitimate children any loss that they might incur out of her own means.

Taking all these circumstances into consideration, Father Philip thought that he could discover the following reasons for acceding to Laura's request.

(1) The prohibition of marriage in such a case is based upon the danger of causing the injuries enumerated above; but, in Laura's case, it seems that this danger is not great, and therefore there is no need to insist upon the prohibition. Even Lehmkuhl says, in his *Casus conscientiae*, II. n. 845, in discussing a similar case: "*Quodsi puella ante matrimonium occulte pareret prolique bene consuleret, ita tamen, ut ipsius maternitas maneret omnino tecta, de graviditate non aliter judicandum est, ac de fornicatione*

sine sequelis." St. Alphonsus says (l. VI. n. 865) of such a woman that some authorities would permit her to give an evasive answer, should her husband question her on this point, or even to conceal her fault with a *restrictio non pure mentalis,* as in all probability it will never do him any harm at all.

(2) It can scarcely be a sin on Laura's part if, by concealing the fact of her pregnancy when she marries, she does what is not forbidden *in se, sed solum propter periculum damni proximi,* and is moreover the only means of averting evils of a much worse kind. Gury takes this view in his *Casus conscientiae,* II. n. 871, with regard to a similar case: "*excipiunt plures; si instantibus nuptiis, puella aliter quam per matrimonium famae consulere non posset, quia tunc non teneretur tantum famae detrimentum subire ad damnum temporale sponsi avertendum.*"

(3) The chief reason, however, for not forbidding Laura's marriage seemed to Father Philip to be the *extrema necessitas* of the child that she had conceived; for, if she could not marry at once, she was in the greatest danger of yielding to the temptation to procure abortion. The child was therefore in extreme spiritual and bodily *necessitas,* and under existing circumstances Norbert alone could save it. In such a case any one would be strictly bound to even greater sacrifice than Norbert would make by this marriage; therefore he could not be *rationabiliter invitus,* if such a sacrifice were imposed upon him by Father Philip's decision. The latter, after he had well considered all the arguments in her favor, could not make up his mind either to prohibit the marriage or to force Laura to reveal her condition to Norbert. He simply admonished her to do her best to avert the dangers he had mentioned from her husband and the family.—Johann Schwienbacher, C.SS.R.

LXXI. PAROCHIAL MASS OR SICK CALL?

Sempronius, a parish priest, without assistant was just starting from his house one Sunday to say the parochial Mass, when he received a message asking him to go at once to administer the last Sacraments to a certain Paula, who had been ill for some time and had suddenly had a stroke. The congregation had assembled to hear Mass, and the sick woman's house was so far away that the people would have had to wait a very long time before Sempronius could return, if he went to her before saying Mass. A sick call could not have come at a more inconvenient moment. One fortunate accident seemed to offer him a way out of the difficulty in which his conflicting duties placed him. He had been to see Paula five or six days previously and she had then received Holy Communion *ex devotione.* Sempronius now thought that this Communion might serve temporarily as her Viaticum, so he said a low Mass in the church and then set out at once to administer the Viaticum, *ritu praescripto,* to the sick person in danger of death, or at least Extreme Unction, if it was no longer possible for her to receive any other Sacrament. However he was too late; she had died not long before his arrival.

Two questions are asked regarding this occurrence.

(1) Should Sempronius have allowed the Holy Communion that Paula had received five or six days before to be her Viaticum?

(2) Was he right under the given circumstances in deferring the administration of the last Sacraments until the end of Mass? Ought he to have gone at once?

Ad. 1. Various answers have been given to this question. Schüch says (*Handbuch d. Pastoral-Theol.*, 10th Ed. p. 700): "If a person has communicated *ex devotione* one or two days previously, he *may* receive the Viaticum, should danger of death occur, but is not bound to do so, if the danger (as in the case under consideration) is a consequence of the disease previously existing, *i. e.*, at the time when he communicated *ex devotione*." Lehmkuhl (*Theol. mor.*, II. n. 140, 4) and Noldin (*Summa Theol. mor.*, III. n. 143) even consider that no obligation, or no certain obligation, to receive the Viaticum exists, when a person has communicated *ex devotione* within a week or "*circiter una ante hebdomada*," "*cum praecepto jam satisfecerit, praesertim si periculum ex morbo invaluit, quia moraliter tum periculum jam instabat vel, ut censet Lugo, quia sufficit communicare in fine vitae seu paulo ante mortem*" (Noldin, *l. c.*).

According to these authors Paula was not strictly required to receive the Viaticum, and consequently Sempronius might allow the Communion she received shortly before to reckon as her Viaticum, although of course he was bound to administer the last Sacraments if Paula asked for them.

Ad. 2. We may assume that Paula, knowing her dangerous condition, in spite of having already received Holy Communion, certainly expressed a desire for the Viaticum, and therefore Sempronius was bound to administer it. If he did not think it necessary to do so at once, he cannot be accused of neglecting what was his real duty as priest in charge of souls, since he might *rationabiliter* asume that the sick woman had no grievous sin on her conscience, because she had so recently received the Sacraments. Moreover, a considerable postponement of the parochial Mass could not fail to cause *incommodum*. If Paula had not communicated

very recently, Sempronius ought of course to have taken her the Viaticum at once, and should have put off saying Mass, and even should have interrupted it, if he were already saying it. The same rule would apply, if he only could have administered Extreme Unction, if the dying person was no longer able to receive the Sacrament of penance and the *Viaticum*. If this had been the case, and Paula had been *in statu peccati mortalis,* the administration of Extreme Unction would have been a duty binding *sub gravi,* and it would have admitted of no delay, since *in hoc casu* the dying woman's salvation might have depended solely upon her reception of this Sacrament in good time. Under other circumstances, according to the *sententia communior* (St. Alphonsus, l. VI. n. 733; Lehmkuhl, *Theol. mor.,* II. n. 578), there is no obligation *sub gravi* to receive Extreme Unction, and there was none in Paula's case, partly because, as we have seen in considering question 1, the Communion received a few days previously might be regarded as her Viaticum, and partly because there was no reason for fearing that she was in a state of mortal sin.

If Sempronius had gone to administer the last Sacraments, as soon as the message reached him, Paula might at least have received Extreme Unction, even if it had been impossible to give her the Viaticum. Under the given circumstances, however, it cannot be maintained that she was strictly bound to receive either the Viaticum or Extreme Unction, and any considerable postponement of the parochial Mass would certainly have caused serious *incommodum* to the people intending to assist at it. Hence we cannot blame the parish priest for not going to administer the Sacraments to Paula until after he had said Mass. The case would have been different if Paula had lived near the church, so that there need not have been a long postponement of Mass, or if

Sempronius had held the *usual* and longer Sunday service in spite of being summoned to go to her. In either of these cases he would at least have to submit to the reproach of having acted injudiciously.

LXXII. REVALIDATION OF AN INVALID MARRIAGE

Rufina apostatized from the Catholic faith, and becoming a Jewess, was married before a Rabbi to a certain Samuel. After some time the latter asked for baptism. The priest to whom he applied, after obtaining the parish priest's permission, asked and received the necessary faculties from the ordinary, *viz.*, leave to baptize, authority to reconcile the apostate, and a dispensation from publishing the banns of marriage three times. This priest, who had no regular care of souls, was asked expressly by the parish priest whether he would undertake the whole matter, and answered in the affirmative, subject to the parish priest's permission, who thereupon said: "That is given."

On the appointed day the priest awaited in the sacristy the rector, who on his arrival exclaimed: "It was not necessary to wait for me. Go right ahead," and went away. Being convinced that he thus had received all the necessary authorization, the priest baptized Samuel (he had previously reconciled Rufina), proceeded to the oath of manifestation, and then married them before two witnesses. Having completed the ceremony, he was summoned to the rector, who addressed him thus: "I hear you married them! Why, you had no delegation for that." The priest was astonished, but said that he would recall the couple, to renew their consent. The rector, however, answered: "No, let them go now. You could presume the delegation to have been granted." "I beg your pardon," said the priest, "there is no such thing as a *delegatio praesumta*, though

there might be a *tacita,* if you had any idea that, in consequence of your words, I should perhaps marry the couple, and, in case I did so, you were willing to raise no objection." The rector said shortly: "Very well." What was to be done? The priest was undoubtedly right in his action as well as in his opinion.

He devised the following way out of the difficulty. He went to the Bishop of the diocese, and asked him as *parochus ordinarius* to delegate his powers to him, as a precautionary measure. Then, after leaving the married couple in good faith for a short time, he took an opportunity later on of making them renew their consent conditionally in the presence of two witnesses, under the pretext that there had been some mistake in a matter of form.—Honorius Rett, O.F.M.

LXXIII. IS IT POSSIBLE TO HEAR THE MASS OF OBLIGATION WHILE MAKING CONFESSION AT THE SAME TIME?

It is a common practise to hear confessions during the early Mass on Sundays and on holidays of obligation. It often happens that people who go to confession at this time do not think of hearing any other Mass, and, especially in the country, it would frequently be impossible for them to do so. On ordinary Sundays, in the towns also, there are many people, chiefly servants, who could hardly find another opportunity for confession than during the time when they are hearing their obligatory Mass. It is therefore a question of practical importance whether they obey the commandment of the Church requiring us to hear Mass on Sundays and holidays, if they make their confession during this Mass. A discussion of the matter would be particularly opportune, because several theologians have answered in the negative.

Answer (1).—In order to elucidate the subject fully, we may begin by calling to mind the general principles laid down with reference to the positive commandment requiring us to hear Mass on Sundays and holidays of obligation. Dr. Joh. Ev. Pruner writes: "In order to comply with the command, it is requisite (a) to hear a complete Mass said by a priest who is not excommunicated . . . (b) to participate with presence of body and soul. We satisfy the first requirement if we are immediate witnesses of the sacred act performed at the altar, or if we join the congregation and observe the acts by which they express their participation in the

holy Mass. . . . Presence of the soul demands α that we should assist at Mass *voluntarie et libere,* that is to say, with the intention of honoring God and performing a religious act. Simply to be present in order to see the church, or from motives of curiosity, would not be a religious act, but such is necessary in order to obey the commandment; β that we should assist at Mass with *attentio externa, i. e.,* we must set aside any occupation incompatible with paying attention to the sacred action, and we must have at least that degree of *attentio interna* without which the act cannot be called a humanly free act in the species of religion; in other words we must have attention of spirit, so far as to be aware that the sacred act, at which we intend to assist in order to practise the virtue of religion, is now being accomplished at the altar" (*Lehrbuch der katholischen Moraltheologie,* p. 316, etc.).

The question under consideration is whether confession is a transaction incompatible with hearing Mass, or, in other words, "Is the commandment of the Church observed by people who go to confession during Mass on Sundays and holidays, but have the intention to assist at holy Mass at the same time?"

Unless their confession is unusually long, so as to occupy the chief part of holy Mass, and unless it is made during the most important part of the Mass, there can scarcely be any doubt that they fulfil their obligation;[1] it is not questioned even by theologians who have a great tendency to rigorism.

(2) The case is different, however, where the confession lasts a long time, perhaps through the whole of Mass, or the greater part of it, and especially if it is going on during the most important actions of the Mass. Under such circumstances very many theologians deny that the duty of hearing Mass has been fulfilled. As

[1] Cf. Goepfert, *Moraltheologie,* (2d ed.), I. 408, c; Lehmkuhl, *Theol. mor.,* I. 538.

members of the older school who take this view, we may mention Suarez, Bonacina, Lugo, Kollet, Natalis, Alexander, Antoine, S.J.[1] and St. Alphonsus.[2]

Among more recent writers, Dr. Pruner writes as follows on the subject: "Confession during Mass cannot be regarded as fulfilling the obligation to assist at the Holy Sacrifice, if it absorbs the penitent's whole attention for so long that he cannot be said to have been present at a complete Mass" (*S. Lig.*, n. 314).

Gury may also be quoted; in answer to the question: "*An satisfaciat praecepto, qui tempore missae peccato confitetur?*" he says: "*Negative, saltem si confessio sit prolixa, i. e. si toto tempore aut maiori parte missae perduret, quia deest tum attentio interna tum etiam externa; qui enim confitetur suas culpas, rei personam agit, non vero offerentis sacrificium cum sacerdote nec missam audire moraliter censetur.*" [3]

The question is answered in the negative also by Cardinal Gousset, Paul Palasthy, and Friedhoff. Gousset writes: "It is generally assumed that a person satisfies the obligation [to hear Mass] if, during the Mass, he examines his conscience with a view to confession, or reads devoutly some spiritual book, such as the 'Following of Christ,' or says his Office. It is improbable, however, that he can (at the same time) hear Mass while making his confession."[4]

[1] *Theologia moralis universa*, Romae, 1757, pars prima. *Tract. de virtute religionis*, cap. II. quaest. V. resp. 4.

[2] *Theologia moralis*, lib. III. n. 314 and 315.

[3] *Compendium Theol. moralis*, Ratisbon, 1874, Manz. ed. in Germ., V. p. 1, n. 346.

[4] This opinion is expressed rather more decidedly than that of St. Alphonsus Liguori, who admits that there are not unimportant grounds for supposing that it is possible to hear Mass and go to confession at the same time; but hesitates to pronounce this view as probable (although he previously considered it so for internal reasons), because his modesty prevents him, for external reasons, from contradicting the eminent authorities who consider it improbable.

Friedhoff and Palasthy speak as if it were certain that a person cannot go to confession and at the same time fulfil his obligation to hear Mass. Both rely upon internal reasons, which St. Alphonsus knew perfectly well, and which certainly were familiar to those other theologians who, in spite of them, did not feel bound to adopt this opinion. These internal reasons, therefore, are not of such a nature as to justify the certainty with which Friedhoff and Palasthy speak.

(3) If we ask what the internal reasons are upon which the above-mentioned opinion is based, we are told that in order to hear Mass we ought to pray; but making a confession, though a religious act, is not a prayer; a penitent is enumerating his sins, not praying. Confession is, however, undoubtedly an act of worship, and very weighty authorities teach that it is enough to hear Mass with the intention of worshipping God. This argument then seems to prove nothing, as is admitted by St. Alphonsus and others, who maintain that a negative answer should be given to the question under discussion. They proceed therefore to say: Confession is certainly an act of worship, but not one that is compatible with hearing Mass; for the penitent does not act as one who sacrifices with the priest, but as one who acknowledges his sins: "*rei personam agit, non vero offerentis sacrificium cum sacerdote*" (Gury). Self-accusation has nothing to do with sacrifice: *accusatio aut persona rei non spectat ad sacrificium; enarratio peccatorum non est res ad sacrificium spectans.* The penitent, being engaged in enumerating his sins, is so distracted with regard to the Mass as hardly to give it a thought; he is absent in spirit, and therefore we cannot say in a moral sense that he was present at the holy Sacrifice. "*Sacras et pias lectiones facere, e libro vel breviario precari licet, solum ea, quae mentem a missa abstraherent, fa-*

cere non licet, v. g. confiteri, profana legree" (Palasthy) Friedhoff uses similar language.

(4) Other moralists, amongst them theologians of repute, *"haud parvi nominis theologi"* (Kenrick, tract. 4, p. 2, n. 12), answer the question affirmatively. Edmund Voit, S.J.,[1] who follows Lacroix, writes: *"Qui sub Missa per longum tempus confitetur, Missam audit, quia habet intentionem audiendi (uti suppono); adest corpore, quia confitetur in templo; assistit moraliter, quia praesens est humano et religioso modo; sufficienter potest attendere et licet forte actu non attendat, actione tamen pia occupatur et censetur cum sacrificante et circumstantibus Deo cultum exhibere."*— It would of course be possible to argue that not every *actio pia* can be regarded as compatible with hearing Mass, otherwise, as Cardinal Lugo points out, this would be applicable not only to confession, but also to attendance on the sick, etc. The only act of worship compatible with hearing Mass is one which has reference to the sacrifice. No sound answer can be given to this objection, but we must ask whether there is really no reference to the Holy Sacrifice of the Mass, when a person does not merely state what he has done amiss during a given period, but with contrite heart makes his confession to a priest as God's representative, and forms good and serious purposes of amendment in the sight of God.

(5) We cannot possibly adopt the opinion underlying the above-mentioned doctrine, *viz.*, that a Catholic confessing his sins to God and His representative with contrition, imploring grace and mercy, and purposing amendment, in reliance on the grace of Christ, whence all our strength proceeds, is accomplishing a religious act

[1] *Theologia moralis*, Wirceburgi, 1769, pars secunda, n. 480. Cf. Busenbaum, *Medulla theol mor.*, lib. III. tract. III. cap. 1, dub. III. edit. Monasterii Westphaliae, 1659.

that has no reference whatever to the Eucharistic sacrifice, and that in this respect may be placed on a level with the study of the inscriptions in the church, wilful distractions, or the reading of profane books. If we seriously consider the close connection between the unbloody renewal of the sacrifice of the Cross and the Sacrament in which sins committed after baptism are forgiven, we shall certainly arrive at the conclusion that a Catholic obeys the positive command to hear Mass on Sundays and holidays of obligation, if he makes his confession during this obligatory Mass, even though it should occupy the greater part of it. Is not the Eucharistic sacrifice κατ' ἐξοχὴν the sacrifice of reconciliation, and therefore also a sacrifice of participation in the grace of justification through the Sacrament of penance, which is certainly something more than a mere enumeration of sins?

We are told that a penitent confessing his sins appears as a sinner, not as one doing sacrifice, but do I not participate in the sacrifice of reconciliation on the altar, when I confess my sins with true contrition to Christ in the person of His representative, if I do so in the spirit of the penitent thief and with the intention of hearing Mass? if I implore mercy and make good resolutions for the sake of the most holy Sacrifice? if I bring my sacrifice of penance to unite it with that offered by our Saviour on the altar? If once it is admitted that we do nothing incompatible with hearing Mass if we confess our sins to God with true contrition, why should we not do so in sacramental confession, where it is to Him *principaliter* that we confess them? No one objects to our fixing our minds during the whole of Mass upon the Confiteor, Kyrie eleison, Agnus Dei, or some other prayer for forgiveness, and such a devotion is quite in keeping with hearing Holy Mass. In a genuine confession there is the same devotion, in all essentials, and

therefore we believe that the commandment of the Church, requiring us to hear Mass on Sundays and holidays of obligation, is obeyed, if during that Mass a person makes his confession, having the intention to hear the Mass at which he is bodily present.

(6) In our opinion, those who take the contrary view lay far too little stress upon the penitent disposition, contrition for the sake of Christ, who was an offering for our sins. The sacramental confession is the outward expression of this contrition, and by overlooking this fact they come to regard confession as an enumeration of sins and a conversation with the confessor. Such an impression would probably be made upon any one reading the following passage in Antoine (*l. c.*): "*Qui notabili tempore missae confitetur, non satisfacit praecepto; nam caret attentione ad missam requisita, videlicet attentione ad Deum divinaque mysteria; qualis esse nequit in narrandis et investigndis peccatis eorumque circumstantiis et in colloquio cum confessario.*" A similar impression is given by the comparison of confession during Mass with wilful distractions (Friedhoff), and with reading profane books (Palasthy), although in each case the comparison is made only by way of illustration to show the incompatibility of going to confession and of hearing Mass.

Gury [1] and others admit that a person obeys the commandment of the Church with regard to hearing Mass, if he spends his time during Mass in examining his conscience; and therefore we cannot see why the same admission should not be made if any one in a spirit of contrition confesses the state of his conscience to the representative of Christ. We may ask, with Gobat, "*Quis negabit, confitentem Christo peccata sua, missae non satisfacere?*" When we confess to a priest as God's representative, we confess to God Himself.

[1] Gury, *l.c.*, n. 347: *Satisfaciunt, qui conscientiam tempore missae discutiunt, ut confiteantur.*

(7) We believe, therefore, that there are good internal grounds for our opinion; but what is to be said, if a priest doubts whether this view is to be regarded as justifiable? Even in this case it would be well to avoid the rigorism of Natalis Alexander, who would have a confessor inquire whether any penitent, entering the confessional during the last Mass, has already heard Mass, and if the answer is in the negative, he thinks the confessor should refuse to hear the confession until Mass is over—he might hear it then or on some other day.

St. Alphonsus is far more lenient. Although he thinks that it is impossible to go to confession and hear Mass at the same time, he sanctions confession during Mass in a case where the penitent would otherwise have to remain some time out of the state of grace, and he adopts the theory that servants who cannot go to confession at another time satisfy the requirements of the Church if they make their confession during Holy Mass. The Saint goes so far as to quote, without any adverse criticism, an opinion expressed by the Jesuit Lacroix, who says that we may even advise servants and others, who otherwise could not perhaps go to confession at all, to do so during the Mass that they are hearing. "*Quodsi confessio alioquin esset omittenda, uti saepe fieret ancillis et famulis, suaderi potest, ut fiat sub missa, quia voluntas ecclesiae praesumitur esse potius, ut sic audiatur missa et confessio fiat, quam ut attentius audiatur et confessio non fiat.*"[1]—Josef Schweizer.

[1] Lehmkuhl takes the same view, for he writes: "*Si quis vero plene absorbebatur in enumerandis peccatis suis per principaliorem Missæ partem, non videtur quidem satisfecisse: verum aliquando ex hoc ipso oritur causa a missa (alia) audienda excusans. Nimirum si tempus pro alia missa non suppetit, et proin electio datur aut omittendi confessionem et missam audiendi, aut omittendi missam et instituendi confessionem: ultimum tuto eligi potest ab eo, qui alias, quum reconciliatione cum Deo indigeat, aliquandiu in statu peccati deberet manere* (v. St. Alph., n. 332), *aut cui nimis grave esset, diu a sacramento poenitentiæ alienum manere. .Sic etiam Lacr. 1*, n. 676." *Theol. moralis*, 1901, I. n. 558.

LXXIV. ARE PREPARATION AND THANKSGIVING NECESSARY CONDITIONS FOR DAILY COMMUNION?

In a recent book on daily Communion *three* things are said to be necessary for a worthy and fruitful reception of Holy Communion, *viz.* (1) the state of grace, (2) a right and pious intention, (3) a careful preparation and a suitable thanksgiving according to each person's ability, circumstances, and duties. The question is asked whether this is correct.

The Roman decree states expressly: "No one who is in the state of grace and who approaches the holy table with a right and devout intention can lawfully be hindered therefrom." Elsewhere in the decree, and in other Roman rescripts on this subject, these two are the only conditions mentioned as necessary for daily Communion. It is easy to see the reason why this is so: the object is to decide in what state the soul of the communicant must be at the moment of Communion (*in ipso actu*), in order that he may receive it without sin and with good results. Hence the first paragraph of the decree mentions these two conditions which are requisite in every case: the one is binding under mortal sin, the other under at least a venial sin.

Besides the question stated above, and in close connection with it, two more questions may be asked: "What is required for a more fruitful reception of daily Communion?" and "How can the reception of daily Communion, under the required conditions, be secured practically and permanently?"

The Congregation of the Council replies to this in the fourth paragraph of the decree: "Whereas the Sacraments of the New Law, though they take effect *ex opere operato*, nevertheless produce a greater effect in proportion as the dispositions of the recipient are better, therefore care is to be taken (*curandum est*) that Holy Communion is preceded by serious preparation, and followed by a suitable thanksgiving, according to every one's strength, circumstances, and duties."

In these words there are three things bearing particularly upon the question before us:

(a) The degree of efficacy of Holy Communion, as well as of the other Sacraments, depends in the second place upon the *opus operantis, i. e.*, upon the cooperation of the recipient. Some amount of cooperation, the most essential and indispensable, is supplied by the communicant's being in the state of grace and having a right intention; but it is obvious that the Church desires Holy Communion to have its greatest possible effect. Like our Lord, she wishes us to have life, and to have it more abundantly (John x, 10). Therefore she insists upon our receiving Holy Communion as frequently as possible, but she is no less anxious that by improving our preparation and thanksgiving we should derive more benefit from each Communion. She does not prescribe in detail the amount of preparation and thanksgiving, for in this respect she observes the prudent principle: *Pauca praecepta generalia de rebus necessariis.* The Church considers a special preparation and thanksgiving as necessary in order that we should derive more fruit from Holy Communion, or even be sure of making a worthy and fruitful Communion, since, without such special preparation and thanksgiving, the indispensable conditions also would in time cease to be fulfilled, or there would at

least be great danger of the communicant's not having the right intention.

This explains (b) the rule that is likewise a precept: "*Curandum est ut sedula ad s. Communionem praeparatio antecedat et congrua gratiarum actio inde sequatur. . . .*" Let us suppose that the Church had here ordered nothing but the state of grace and a good intention. Many badly instructed or careless Christians would then, as unhappily often happens, receive Holy Communion regularly without any kind of special preparation and thanksgiving. In consequence of their carelessness and ingratitude they would not only fail to receive an increase of grace, but in time their want of recollection, zeal, and religious spirit would be apt to make them overlook one of the indispensable requirements for Holy Communion. *In abstracto* we can imagine a worthy and not fruitless Communion, when, beyond the state of grace and the pure intention, no special preparation and thanksgiving have been made. *In concreto*, however, as time goes on, such a Communion almost ceases to be imaginable, for the pure intention will be destroyed by positive indifference to all venial sins, etc.

The authors of pious books, catechisms, etc., must, however, keep the practical aspect of the matter in view, according to the spirit of the decree, and therefore we must not be surprised if the three things necessary for Holy Communion are grouped together in the manner stated above. As long as Rome has not issued any detailed instructions regarding the *sedula praeparatio* and the *congrua gratiarum actio*, and the length of time that should usually be devoted to them, each Bishop may use his authority to decide the matter for his diocese, in harmony with the spirit of the decree.

(c) At the end of the fourth paragraph of the decree, Rome

has given some general directions in the words "according to each one's strength, circumstances, and duties." If, for instance, all the children who wish to go to Communion every day were required to make a particular examination of their conscience and this were regarded as a necessary condition, it would seem excessive, and not quite in harmony with the decree. Some children may be capable of it, but others are not, and it is quite possible for them to make a serious preparation without this practice. Moreover, in the case of children as well as of adults, "Confessors are to be careful not to dissuade any one from frequent and daily Communion, provided that he is in a state of grace and approaches with a right intention." The Church does not require even weekly confession from those who communicate daily or almost daily, and confessors must be on their guard against asking them to confess except in case of grievous sin.

As to the duration of the preparation and thanksgiving, the Church leaves us a certain amount of freedom, "according to each one's strength, circumstances, and duties." Perhaps a quarter of an hour would be a good average time for a regular preparation and thanksgiving, and it is very desirable that it should be generally adopted. But just as no reasonable person could be shocked if a priest, otherwise zealous, had to shorten his preparation for, and thanksgiving after, Mass, owing to want of time, or the presence of a number of people anxious to go to confession, he would indeed be only following the example of St. Francis of Sales — so in certain cases a shorter thanksgiving in the church suffices when people, who are generally careful, have waited some time for Holy Communion, and soon after receiving it have to go home to attend to pressing duties. Experience shows that their zeal will lead them to make up, on their way home or

when engaged at their work, what they may have omitted in church.

We are told of General de Sonis that, in the midst of his military duties, he felt such a longing for Holy Communion that when on march he gladly availed himself of an opportunity, furnished by a brief halt, to receive Communion in a village church, and after spending a few minutes in fervent thanksgiving, he would resume his ride. Of course we must not allow exceptional circumstances to become a rule. In dealing with children we have to take their age into account, and not insist upon too long a preparation and thanksgiving. They ought to regard it as a joy to go to Communion, but they lose their devotion if required to kneel for a long time. Both the letter and the spirit of the decree should lead us to demand only what is absolutely necessary, but to counsel souls to strive after ever greater perfection by means of frequent and daily Communion, doing our best to inspire them with enthusiasm, and not losing sight of the inward promptings of grace in each individual.—J. Bock, S.J.

LXXV. CONFESSION BEFORE CELEBRATION

Peregrinus, a parish priest, invited his nephew Juvenal to spend a few days with him. Juvenal had been recently ordained and had just been appointed to the cure of souls. He gladly accepted the invitation, for he regarded his uncle as his greatest benefactor, and owed him a debt for having in many ways shown himself a wise friend and counselor. On the last day before his nephew's departure (Saturday), Peregrinus committed a *peccatum turpe ex fragilitate carnis*, and this caused him the greatest distress.

What was he to do? As parish priest he was well aware of the strict command of the Church, requiring him to confess a mortal sin before saying Mass; but it was unspeakably repugnant to him to confess such a *peccatum turpe* to his young nephew, to whom he has stood in so close a spiritual relationship.

As there was a *vera necessitas celebrandi* on the following Sunday, Peregrinus did not feel himself bound under the circumstances to make his confession to Juvenal before celebrating, so he contented himself with perfect contrition. *Quid ad casum?*

Answer.—The rule laid down by the Council of Trent (sess. 13, c. 7), that mortal sins must be confessed before a priest celebrates Mass (Holy Communion), is generally regarded as a *lex ecclesiastica*, but not as a *praeceptum divinum*, perhaps in the sense of an official explanation of the *probatio* required by St. Paul (1 Cor. xi, 28). A difficulty connected internally and inseparably with the fulfilment of such an order certainly forms no ground of excuse, *e. g.*, no kind of shame, however great, justifies a breach of the

law; otherwise no priest would be bound to confess any particularly shameful sin. It is, however, possible for a *verecundia extraordinaria* not to have its origin so much in confession of the sin as in some external circumstance, not essentially connected with the confession, but conditioned by some peculiar chain of events. This is true in the case under consideration. We have present in it the near relationship (uncle, nephew), and the particular bond of affection between Peregrinus and Juvenal (the former has been the benefactor, friend, and spiritual adviser). These circumstances give rise to a *verecundia extraordinaria*, and many of the more important recent moralists regard them as a *ratio excusans a lege Tridentina.* Father Génicot, S.J., *in his Institutiones theol. mor.*, II. n. 193, says: "*Satis probabilem opinamur quorundam A. A. sententiam: excusare verecundiam extraordinariam et vere invincibilem, puta si patruus apud nepotem peccatum valde probrosum confiteri deberet. Ratio est: in talibus casibus confessionem instituere difficillimum esse ob ingentem repugnantiam vincendam. Nam, teste S. Thoma* (Suppl. qu. 8, a. 4, ad 6): '*Multi sunt adeo infirmi, quod potius sine confessione morerentur quam tali sacerdoti confiterentur.*' *Neque videtur hoc incommodum intrinsecum confessioni. Huic enim reapse intrinseca est amissio famae apud confessarium, nequaquam autem difficultas orta ex eo, quod quis hic et nunc nullum alium habeat confessarium praeter hunc, quem, justas ob causas, summopere horret. Vel, etiamsi cui videatur intrinseca, non apparet, quare in lege probabiliter mere ecclesiastica et in qua AA. excusationes admittunt ob causam non ita gravem, puta unius alteriusve leucae distantiam* (S. Alph., n. 264), *non possit per epikiam excipi casus humanae infirmitati durissimus.*"

Aemilius Berardi, the well-known Italian writer on pastoral

theology, expresses himself in very much the same way in his *Praxis Confessariorum* (p. 558, etc.); he denies that the *copia confessarii*, presupposed by the rule of the Council of Trent, exists in a case where a *confessarius in promptu quidem esset, sed repugnantia invincibilis obstaret, quominus apud illum confessio fieret, Quid enim si patruus apud nepotem probrosissimi peccati confessionem facere cogeretur? Patrui apud nepotes confessionem facere non solent; et proinde ageretur de medio nimis abnormi. Caeterum* (*contra Gury, cas. consc.* II. 287 *et alios, qui hoc in puncto rigidissime sentiunt*) *mitius loquuntur theologi sequentes. Voit* (n. 350) *aperte supponit, quod verecundia sola aliquando possit esse tanta, ut excuset. . . . Gousset* (n. 193) *ait: "Confessarius deesse censeretur, quando talis dumtaxat sacerdos praesens foret, apud quem confessio, propter repugnantiam plus minusve legitimam, sed ineluctabilem, fieri nequiret. . . . Ego dicerem quod verecundia vere magna et extraordinaria sufficiat, ut necessitate urgente cum sola contritione missa celebrari possit aliqua vice cum proposito adeundi proprium confessarium quamprimum; nec volet ratio, quod sola verecundia nunquam sufficiat ad dimidiandam confessionem; facilius enim concedi potest, quod aliqua missa cum sola contritione* (*dum peccatum quamprimum certe accusabitur*) *celebretur, quam quod motivo verecundiae confessionibus dimidiatis aditus aperiatur. . . . Quid demum, si miser sacerdos in casu adeo stricto, ad infamiam potius subeundam aut ad alia inconvenientia permittenda esset paratus quam ad sacrificium adeo durum tolerandum?"*

Views equally lenient are taken by Fr. Kenrick, who died in 1863 as Archbishop of Baltimore (*Theol. mor. de euch.*, p. 1, c. 4, § 2) and Noldin (*Summa theol. mor.*, III. n. 141); the latter refers to Berardi and Génicot (*ll. cc.*) in support of his opinion.

The reasons adduced by these eminent theologians certainly enable us to claim probability for their theory. In the case under consideration there is an *incommodum gravissimum* due, not to the confession itself, but to purely exterior considerations of kinship and affection, and therefore we may probably apply here the general principle: "*lex humana (positiva) non obligat cum gravi incommodo.*" The Council of Trent, in making this law, certainly had in view ordinary circumstances, in which a *verecundia extraordinaria* is connected internally with the duty of confession, not those in which it is connected with this duty in a purely external way.

It is true that this distinction may be abused, and the plea of *verecundia extraordinaria* be put forward too lightly; such an abuse, however, would not be due to the theory, but to too lax an application of it in practice.

The question resolves itself finally into this:

Rigorism when pushed too far (as Berardi says, and as was suggested even by St. Thomas, *l. c.*) often leads to sacrilege, because a priest cannot make up his mind to go to confession; ought we not therefore to prefer to avoid it, by adopting a rational and justifiable application of a theory which, though less stringent, is probable, both for internal and external reasons?

Such a case of *verecundia extraordinaria* occurs very seldom, and priests may be trusted to have enough prudence and conscientiousness to prevent too lax an application of the principle. In my opinion Peregrinus was quite justified in being contented with *contritio perfecta*, although he was bound nevertheless to confess the sin committed *quam primum, i. e.*, within three days.

This more lenient opinion is obviously not to be limited to priests. For instance, a priest's sister, acting as his housekeeper,

after making her confession on the day before Communion to a priest in another parish, might commit a similar *peccatum probrosissimum.* Could she be bound to confess it to her own brother? No one could seriously require this of her; there is not only such a thing as *vera necessitas celebrandi,* but also *necessitas communicandi.*

We are far from wishing to tolerate laxity too freely, but a knowledge that there is a more lenient view may be of assistance to confessors and help priests, who are their penitents, to avoid a *conscientia erronea.*—Dr. Johann Gföllner.

LXXVI. MISTAKEN IDEA OF THE SIN OF PRESUMPTION

Penitents, especially children, are apt to say that they have sinned through presuming on God's mercy. When asked what they mean, they say: "I thought I would do something and then confess it." Are such penitents really guilty of presumption?

No! What is presumption? St. Thomas defines it, in his *Summa*, II. II. qu. 21, a. 1, as "*immoderantia spei in hoc, quod aliquis tendit in aliquod bonum ut possibile per virtutem et misericordiam divinam, quod possibile non est; sicut cum aliquis sperat se veniam obtinere sine poenitentia vel gloriam sine meritis.*" Any such *excessus spei* is sinful, for underlying it, as the angelic doctor explains (*l. c.* a. 2) is an *intellectus falsus, viz.* a false supposition that God pardons those who continue in their sins. *Excessus spei* arises from this erroneous idea, as a *motus quidam appetitivus;* and it is sinful because *omnis motus appetitivus, qui se conformiter habet ad intellectum falsum, secundum se malus est et peccatum.*

The explanation given by St. Thomas of the nature and sinfulness of presumption shows that this sin has not been committed in the case under discussion. He is presumptuous, *qui sperat se veniam obtinere sine poenitentia;* for this *excessus spei,* being a *motus appetitivus,* is based upon a false assumption that God will pardon one who refuses to amend his ways. Our penitent, however, thought that he could confess his sin; consequently

he did not make the mistake of supposing that God would pardon him if he persisted in sin, but he was right in believing that the Lord would have mercy upon him if he repented and confessed. Therefore the *motus appetitivus* is based upon this correct supposition, *viz.*, upon the hope of pardon, and is not sinful. On the contrary, the intention to confess the sin is apparent in this thought, and is contained *implicite* in it, and is in itself good, so that such a penitent sins less than he would have done without thinking of his conversion; for without this thought his will would have been more inclined to sin and its malice would have been greater. "*Peccare sub spe veniae quandoque percipiendae, cum proposito abstinendi a peccato, et poenitendi de ipso, hoc non est praesumptionis, sed hoc peccatum diminuit, quia per hoc videtur habere voluntatem minus firmam ad peccatum*" (Th., *l. c.* q. 21, ad 3). Hence, according to St. Albertus Magnus, Adam sinned less grievously, "*Quia sub spe veniae peccavit.*"

It is with good reason that Lehmkuhl warns confessors (I. n. 312) to make sure that penitents who accuse themselves of presumption are really guilty of this sin. For "*si quis ex fragilitate vel passione peccat simul sperans, fore ut veniam postea consequatur, ac proinde statuens saltem implicite, se postea converti et a peccato recedere, non committit peccatum praesumptionis, imo ut scriptores notant, peccatum potius diminuitur*" (*l. c.*).

If, however, the sin of presumption has been committed, how ought we to deal with it? Is it invariably a mortal sin? In its nature it is a mortal sin, but *propter indeliberationem vel imperfectionem actus* it may, like other sins that are in their nature grievous, become merely venial. Modern moralists, such as Gury, Lehmkuhl, and others, are of opinion that whoever commits a venial sin through presumptuous confidence in God's mercy com-

mits also a venial sin of presumption. Elbel, on the contrary, thinks that in this case there is no real presumption, "*quia per hoc non exspectatur beatitudo temerarie vel mediis in hunc finem a Deo minime ordinatis obtinenda.*"—Dr. Kilian.

LXXVII. FALSE WITNESS IN A COURT OF JUSTICE

In a criminal trial Caius was called as witness against Titus, and gave false evidence on oath. This evidence, in conjunction with a good deal of circumstantial evidence, caused Titus to be sentenced to six years' imprisonment and to the loss of his civil rights for a similar period. After Titus had served over a third of his time, Caius attended a mission, and his conscience was awakened, and he went to confession. What obligations ought his confessor to impose upon him?

1. Is Caius bound to make restitution?

2. Is he bound to give information against himself, so as to effect the release of Titus?

1. We have here a case of *injusta damnificatio*, unjust injury of a fellow man. For the duty of restitution to follow any injurious action, it is necessary (a) that the injury be unjust, that it is a violation of some real right, not merely of love or some other virtue; (b) that the action be really *causa efficax damni per se;* i. e., α that the injury actually followed, and was not merely intended or attempted, β, that the injury can be referred to the action as its obvious cause; and (c) that it be theologically sinful.

The first two conditions are plainly fulfilled. Titus was condemned though he was innocent, and he suffered injury;—the loss of his liberty, honor, means of livelihood, etc.

If Caius intentionally or through criminal negligence gave false

witness, he is manifestly responsible for the whole injury and therefore is bound to repair it. If he made false statements in invincible error, he is under no such obligation. The same may *probabilius* be asserted, if his false testimony was due to some venial sin of carelessness or want of thought. Lehmkuhl is right in pointing out (Casus II, n. 692) that an action involving a venial sin approaches an innocent action more closely than one involving mortal sin. It should, however, be borne in mind, that the duty of care and attention, and therefore the sinfulness of neglect, increases in proportion to the importance of the matter; so that carelessness might be in one case a mortal, and in another only a venial sin. In either case, however, whether Caius has committed a venial sin or no sin at all, justice requires him to correct his mistake, as soon as he becomes aware of it, if there is reason to hope that such a correction will avail to secure the release of Titus, and the restoration of his honor, and to prevent his suffering further harm. We are bound in justice not only to refrain from wilfully injuring our neighbor, but to take care that no bad result shall come to him in consequence of our action.

If it is in Caius' power to correct his false testimony, if such a correction would do good to Titus, and if nevertheless Caius does not make it, he at once becomes bound to make reparation for all the harm resulting from his false evidence. We are assuming, however, that the witness sinned venially or not at all, so he cannot be required to effect the correction at the cost of inflicting a comparatively greater injury upon himself. That people should regard him as a rather reckless person would not, as Lehmkuhl remarks, do him any serious harm; but if there were reason to fear that he might be condemned in a court of law for giving careless evidence he need not retract his evidence.

2. How do matters stand if a witness has given false evidence either purposely or through criminal negligence?

In the first place, he would certainly be responsible for all the harm inflicted on the accused man himself and his family. Would it be the duty of the witness to give information against himself and to expose himself to serious penalties, such as loss of liberty, honor, and property, in order to obtain the release of the innocent man and to save his honor? Lehmkuhl (*Th. m.*, II, 820, IV) says that three things must be kept in view in judging the question: the guilt of the false witness, the injury to the innocent man, and the penalty on the guilty person.

If it were physically or morally possible, he might go to some place where he would be safe from arrest, and there make his retractation in legal form before a commissioner, and then send it, or have it sent, to a court competent to deal with the matter. If this retractation seems credible, and circumstances and facts are mentioned which bear it out, so that the proceedings can be re-opened, and the accused man set at liberty, this course will suffice.

It is not always, perhaps it is not often practicable, however, because people are apt not to believe a retractation sent from a distance, and it might easily be misused.

If therefore the case is merely one of carelessness, it would be the witness's duty to surrender himself to justice, even at the risk of prosecution for carelessly making false statements on oath, since the punishment he would have to undergo is trifling in comparison with the penalty imposed upon the innocent person. If, however, the sentence had been less severe, or if the innocent prisoner had served the greater part of it, and his loss otherwise was not very great,—whereas the witness, if sentenced to im-

prisonment, would lose some official position,—under such circumstances the false witness need not retract his evidence.

The obligation to do so is more binding if the witness wilfully committed perjury. If such a witness acknowledges later that his evidence was false, he is subject to a heavy penalty. Schwane (*Die Gerechtigkeit*, § 80, 5) says that no one can force a man to denounce himself and to expose himself to such a penalty. The *communis* of most writers is, however, opposed to this view, and requires the *malum nocentis* not to be taken into consideration in comparison with the *malum innocentis*, and regards it as his duty to repair the injury to the innocent man, at the cost of at least equal suffering to himself. Lehmkuhl thinks that he ought to expose himself to a much more severe penalty, because of the lasting slur cast on the innocent person's character.

It depends entirely upon the circumstances of each individual case whether we ought to take into consideration any differences of rank in the persons concerned. It is possible that the innocent man, if of low rank, might suffer no serious consequences beyond the actual loss of his liberty for a time, but that the witness would be absolutely ruined.

If the verdict was certain without his evidence, because the charge was sufficiently proved by the testimony of others, and if what he said did not cause the penalty to be made more severe, the witness need not be called upon to make reparation and to expose himself to such serious injury. Practically he is often not required to make a retraction, because it would do no good to the innocent man (Génicot).

Some authors go much further and say that if a man has been condemned to death on false evidence, and the witness would endanger his own life, he must still acknowledge himself to be

a murderer and confess his own crime, if no other way is open to him; for the life of the innocent is preferable to that of the guilty. It is only where the sentence pronounced was comparatively light, and the term of punishment perhaps at an end, and the loss of reputation inconsiderable, that a witness might be released from the obligation of giving himself up to justice, although the duty of making full compensation for the material loss suffered by the innocent man would remain.

It might occur that a witness, although he sinned grievously by giving false evidence, did not realize the severity of the sentence that he was bringing down upon the accused. Such a thing might happen among the lower classes.

Now that I have examined the question again, this is the sense in which I prefer to answer it, although hitherto, and even in the sixth edition of my *Moral Theology,* I have left it undecided. St. Alph., l. IV. n. 269 (Busemb.); Lehmkuhl, *Th. m.,* I. 820, IV.; *Cas consc.,* I. 693; Aertnys, I. l. V. Tr. III. l. III. n. 361 d; Schindler, II. 225; Gousset, II. 1050; Konings, I. 1074; Haine, L. 2 p. 2537, cf. pp. 142, 143; Génicot, II. Tr. X. n. 14.—Prof. Dr. Goepfert.

LXXVIII. BREACH OF CONTRACT

The following case was sent me recently for discussion.

An agent employed by an insurance company was commissioned to investigate the cause of a fire, and discovered a store of paraffin in the house that had been burnt down. According to the terms of the insurance policy, no payment can be claimed from the company by any one storing paraffin on his premises, but in this case the paraffin was certainly not the cause of the fire, as the agent found it had not been touched by the flames. The shopkeeper, in order to avoid any difficulty with the insurance company, gave the agent £50 to say nothing about the paraffin, and the company paid £500, the sum for which the house was insured, without demur. Is the agent bound to refund (1) the money that was the price of his silence, (2) the money paid by the company? If so, to whom ought it to be refunded?

Answer.—From the wording of the question I infer that the insurance agent has accused himself in the confessional of his trickery. Otherwise we should have to begin by considering the case of the shopkeeper, and ask whether he ought not to refund the money received. The agent and the shopkeeper are *cooperatores ad damnum*, but in such a transaction the *jubens et consulens* comes first, and the *mutus* or at least *non obstans* second.

The shopkeeper is guilty of breach of contract. An insurance policy is a bilateral contract: "You pay me so much annually, and I undertake to pay you a proportionate sum if your house is

burnt down accidentally, or by some one else's fault." Both parties are bound conscientiously to observe the terms of the contract.

In the case before us a flagrant breach of contract has occurred on a point upon which the company insists as a *conditio sine qua absolute non.* The shopkeeper has no right at all to his £500, he is enriched by means of *res aliena;* and that being so, as he has been the *cooperator jubens* in the transaction, he is especially bound to make restitution.

In a less degree the agent is also bound to refund the money.[1] He is not bound, if the *causa principalis* has made restitution (Alph., lib. 3, n. 581); but, on the other hand, the *causa principalis* is required to indemnify the agent, if he has made good the whole loss.

In case the shopkeeper refuses to refund the money, and the agent has not the means to do so, he must at least pay the company the £50 that he received as hush money.

If the shopkeeper makes restitution, common sense would probably suggest that the two *cooperatores* should refund *pro rata in solidum;* the *consulens* £450 and the *mutus* the £50 hush money. The tacit condition that the £50 is to be paid only if the insurance money is secured is worthless. I suppose, however, that the agent might keep the £50 if the shopkeeper refunded the £500 in full, and made no claim upon him; for (1) the latter was *sciens* and *volens,* and must have been prepared for a possible frustration of his designs; (2) the agent was, quite apart from that, bound to make full restitution in case the shopkeeper refused to do so.—Professor Gspann.

[1] For the *mutus contra justitiam* to be held responsible, three things are requisite: (a) *ut ex officio obligetur,* (b) *ut culpabiliter non impedierit,* (c) *ut sine gravi incommodo damnum avertere potuerit.*

LXXIX. SYPHILIS IN MARRIAGE

A married woman learns that her husband is suffering from syphilis. Must and can she continue to live with him as his wife? He declares solemnly that he has not contracted the disease by any fault of his own.

In consequence of the immorality prevalent in large towns, cases of this kind frequently occur, and may have very disastrous results, so that a detailed discussion of the subject seems necessary.

If the husband has contracted this loathsome disease through actual adultery, he has lost all right to the *debitum conjugale*, and consequently the wife may refuse to live with him. This is the doctrine taught by all writers on moral theology and canon law; they base their opinion upon Matth. v, 31, 32, and xix, 9.

In dealing with the case before us, we are not concerned with the details of the adultery, nor with the question whether sodomitic and bestial intercourse have the same effect, and therefore we may set aside these matters.

The man declares that he has contracted syphilis by no fault of his own. Is this statement credible? Physicians are now agreed in believing that people may possibly, though not probably, become infected with syphilis in an innocent manner. Dr. Surbled writes as follows: " The infection can be conveyed directly through the mouth, the breast, or any other part of the body where the mucous membrane is exposed; but there are many indirect ways

of becoming infected; for instance, by drinking out of a glass or smoking a pipe used by a sufferer from syphilis, or by wearing his clothes. Midwives are by their occupation exposed to the danger of catching this disease, and so are medical men. . . . However, it is only in exceptional cases that syphilis is caught in any of these ways, and they do not suffice to overthrow the general theory that "syphilis is a serious disease, brought on by immorality, and, as a rule, only those who voluntarily lead a vicious life display its unpleasant and shameful symptoms." (*La morale dans ses rapports avec la médecine*, II. 92, 93, ed. 10.) Other physicians write in a very similar way.

We may assume therefore that the husband's assertion is hardly credible, unless he can bring forward some proof of his innocence. If he adheres to his statement, his wife ought not to refuse him the *debitum conjugale* on the ground that he has probably committed adultery, because his undoubted right to the *debitum* cannot be contested on the ground of what is only a probability. It is true that when a question arises of the loss of the *debitum conjugale* in a case of adultery, only a moral certainty as to the facts of the case is required, but it can hardly be said to exist here.

There are, moreover, other reasons besides adultery which release anyone from the *debitum;* we may sum them up shortly, and say that the *debitum* need not be granted if it would result in any considerable injury to mind or body. The moralists teach that a separation from bed and board is allowed where otherwise there would be great danger of sin.

With regard to bodily injuries Berardi writes: "*Debitum habitualiter et vicissim denegari potest:* (1) *Si uxor in partu mortis periculum subiret, ita ut si denuo gravida evaderet, medicorum*

judicio certo aut probabiliter moritura esset. (2) *Si uxor incipiente canchro uteri laboraret, ita ut post coitum copiosae sanguinis emissioni subiceretur.* (3) *Si ipsa coitum subiret cum dolore valde acuto, qui singulis vicibus repeteretur.* (4) *Si vir lue venerea laboraret, ita ut in verendis ulcera aut percolationes haberet; tunc enim non solum uxor ipsa, sed etiam proles miserandum in modum inficeretur, non sine magno periculo, ne abortus sequatur et ipsum baptisma administrari nequeat. . . .* (5) *Si vir aut uxor vitium organicum cordis haberent; tunc enim coitus semper valde nocet et mortem etiam repente et actu ipso producere potest.* (6) *Si vir aut uxor ita phthisi pulmonari* (this would probably apply to every other form of communicable tuberculosis) *laborarent, ut assidue febricitantes ad ultimum huius morbi stadium approximarentur ut sanguinem iam exspuerent"* (*Praxis Confessar.*, I. 1042).

Capellmann-Bergmann writes very decidedly on the subject of syphilis: "Syphilis is so serious, disgusting and shameful a disease, that in my opinion the *copula* ought always to be forbidden, if only one of the *conjuges* suffers from it. In this disease the danger of the healthy person being infected at the *copula* is very great, as long as any external symptoms exist. Even when syphilis is latent in the husband, and there are no external symptoms of it, the wife may be infected as soon as impregnation occurs. For the infected person to demand the *copula* would be a horrible outrage upon the healthy partner, on whose part it would be in my opinion madness, rather than charity, to incur so great a risk of being infected with such a disease. I cannot even regard a *periculum incontinentiae* as a *causa honestas* in this matter. I may be thought to speak too strongly, but whoever has seen the awful consequences of this disease will agree with me. I think that there is not a single medical man who would

not share my opinion. The consequences to the offspring resulting from such a *copula* are most disastrous. The children are almost always syphilitic, like their parents, even when in the parents the disease is latent. Abortion and premature births are of common occurrence, and children carried to the full time often die most miserably before they are more than a few months old. Thousands of children are thus called upon to expiate the sins of their fathers, and often die without baptism." (*Pastoralmed.*, 192, ed. 14.)

From the purely medical point of view there may be full justification for these statements, but moral theology requires us to recognize certain distinctions and limitations, which may be summed up as follows:

(1) If one conjux shows symptoms of syphilis, a trustworthy physician must be consulted, and asked to decide whether the syphilis is hereditary or acquired. If the former, the patient is of course not to blame, but the confessor ought, if not actually to insist upon, yet at least urgently to recommend, continence, because hereditary syphilis may be communicated to the offspring of a marriage, although it is not directly infectious.

(2) If syphilis has been acquired after marriage, inquiries must be made to ascertain whether it has been contracted in an innocent or guilty manner. If the latter, the innocent partner has the right to refuse *copula carnalis*. The same right exists also in the former case, but for another reason. St. Thomas has laid down the principle: *Vir tenetur uxori debitum reddere in his quae ad generationem spectant, salva tamen prius personae (propriae) incolumitate* (Suppl. qu. 34, art. 1), *i. e.*, if to grant the *debitum* would involve serious danger to one's own health, it may be refused. *Periculum incontinentiae* and any quarrels that might re-

sult from the refusal are not enough to force the innocent partner to grant the *debitum conjugale*, as they only amount to a *necessitas gravis*, and no one is bound in such a case to assist his neighbor *cum maximo proprio incommodo*.

The decretal of Alexander III. (c. 2 X. IV. 8), which is sometimes quoted on the subject, need not be understood to impose such an obligation. It contains the words: *Quod si virum sive uxorem leprosum fieri contigerit et infirmus a sano carnale debitum exigat; generali praecepto Apostoli, quod exigitur est solvendum: cui praecepto nulla in hoc casu exceptio invenitur*, but at the time when it was issued *copula cum leproso* was not considered likely to cause the disease in a healthy person. Many medieval writers pointed out this fact when commenting on the decretal. (Cf. S. Thomas, *l. c.* ad IV, Sanchez, *de matrim.*, lib. IX. disp. 24, n. 17, Cajetan, Victoria, Soto, Ledesma, etc.). Therefore it may be laid down as a general rule that the healthy partner is not bound to grant the *debitum conjugale*. Certain limits may be assigned to the right to refuse it. There is still a good deal of obscurity with regard to the therapeutics of syphilis; and the disease, after apparently being cured, sometimes breaks out again, but still medical men as a rule believe that the danger of infection ceases after a definite period. Professor E. Lesser (*Klin. Wochenschr.*, No. 23, 1902) says: "The danger of infection is connected with the secondary period, and does not continue more than five years." Consequently the innocent partner is perhaps bound to grant the *debitum conjugale*, if the other has shown no symptoms of syphilis for a considerable time.

(3) The innocent partner *must* refuse the *debitum* if to grant it would cause unjust injury to a third person, and especially to their own children. It frequently happens that there are children

requiring education, or aged parents needing support, or that mother and child would both perish if she became pregnant as a result of granting it. In these and similar cases the innocent partner would not be justified in risking infection, as thus an absolute wrong would be inflicted upon others. In my opinion it would objectively be grievously sinful for the mother of little children to grant the *copula* to a syphilitic husband, as she would expose her children to the danger of becoming orphans, and should she again be pregnant, the child would certainly also suffer from syphilis, and would probably die before its birth, and so be deprived of baptism. It would be absolutely cruel for a mother to treat her children thus. The case is different if from conjugal intercourse the *only* sufferer is the innocent partner. Under certain circumstances *copula* might not only be allowed in this case, but might even be very meritorious. For instance, if a good wife has reason to hope that by her self-sacrifice in granting the *copula* to her disgusting and syphilitic husband she may preserve him from worse evils, or even bring about real amendment of life, it would be a meritorious work to allow conjugal intercourse, and not madness, as Capellmann calls it in the passage quoted above. Her husband is *in necessitate gravi spirituali,* and it is permissible, and even meritorious, to save one's neighbor from such a state, even at the risk of one's own life.

It is, for instance, highly meritorious if a missionary ministers to lepers, although he incurs great danger of infection.

Of course a woman granting the *copula* under such circumstances would take all possible care, in accordance with medical advice, so as to avoid infection, since it is a duty incumbent upon every man to protect his own health as far as he can.

Several eminent theologians, such as Sanchez, Petrus, Soto and

others, teach that in such cases the *copula* is permissible and meritorious. Cajetan, however, says: *Si sanus aut sana conjux non curat periculum infectionis propriae ex contagione propter amorem conjugis, non solum a peccato excusatur, sed, si ex caritate facit, meretur. Videmus quotidie nostris temporibus* (it does not say much for the morality of that period!) *conjuges non se deserere quoad torum et habitationem, propter tam grande malum et contagiosum, quale est malum vulgariter appellatum gallicum.* (Com. in II. II. qu. 154, art. 1, n. 14.) This *malum gallicum* was nothing but syphilis.

In practise a confessor ought to be very cautious when such a case comes under his notice, and he ought to express no decided opinion without knowing that of a trustworthy physician.—Dr. Prümmer, OP.

LXXX. CONVERSION FROM THE EASTERN SCHISM TO THE CATHOLIC CHURCH

Jovan, after being baptized and brought up in the Greek Church, now desires to be received into the Catholic Church. Is his baptism to be regarded as valid?

The Church strictly orders a priest who obtains faculties to admit to the Catholic Church a person belonging to some other Christian denomination to make sure that the convert has been validly baptized. If *post vestigationem peractam* it appear certain that he has not been thus baptized, the priest must baptize him *absolute*. Should there be a *probabile rationabile dubium* with regard to his baptism, the Sacrament must be administered again conditionally.

Have the Eastern schismatics valid baptism?

Baptism is undoubtedly administered validly in all the so-called Churches (the name is used incorrectly, as there is but one Church, *viz.*, the Catholic) which have come into existence in consequence of the Oriental or Greek schism since 1054. We may regard as validly baptized all the members of the schismatical Greek Church in the patriarchates of Constantinople, Alexandria, Antioch and Jerusalem, also all who belong to the Orthodox Church in Russia, to the Greek Church in Greece, to the Orthodox Churches in Bulgaria, Servia and Montenegro (Cernagora), as well as the Serbs, Bulgarians and Roumanians in the Turkish territory near the Balkans. The same is true of the Serbs, or Greeks, or Orthodox in Bosnia and Herzegovina, of the Dalmatians, Croatians

and Slavonians, both in Hungary and in Austria. It is true also of all adherents of the schismatical Greek Church in Roumania, as well as of the members of the Graeco-Roumanian Church in Hungara and Siebenbürgen, as well as in Bukovina. We may safely assume that the members of any one of these Churches have been validly baptized. Some doubt may arise in the case of Russian sectarians, who have cut themselves off from the Orthodox state Church and can hardly be said to retain the principles of Christianity. There seem to be several millions who belong to various sects of this kind, and many may not have been baptized at all if they have succeeded in evading the compulsory baptism required by the state.

There are good reasons for regarding as valid the baptism of members of the Eastern Churches. They have preserved the hierarchy instituted by Christ with the *potestas ordinis*, and their priests have valid orders. They retained the Sacrament of Holy Order and great care has always been taken to preserve the validity of their orders. In the Churches enumerated above there are priests (popes) who administer the Sacrament of baptism, in fact, in some of these Churches, baptism could at one time not be administered by laymen, but only by a properly ordained priest. A Catholic synod in 1703 complained: "*Schismaticorum quippe perniciosa lex est, parvulos, urgente quoque necessitate, nonnisi a Sacerdote baptizandi*" (*Collect. Lacensis*, I. p. 298).

Although this may not have been a universal practise among the Eastern schismatics, it shows what scrupulous care was taken to secure valid baptism, as laymen were not permitted to administer it lest they should not do so validly. This fear seems justifiable, as the people in general are not well instructed in religious matters.

The members of the Eastern Churches, like ourselves, regard baptism as the first and most indispensable Sacrament, by means of which original sin and all actual sins committed before baptism are forgiven, and sanctifying grace is imparted to the soul. The idea, common among Protestants, that baptism is only a *signum mere externae aggregationis ad ecclesiam,* is quite foreign to the Eastern Churches. They are far from regarding it as a matter of indifference how baptism is administered, and their priests are most careful in seeing that this most important Sacrament is administered validly in accordance with their ritual. The Church is forced, however, to emphasize the fact that the laity may now validly baptize *in casu necessitatis* if the correct matter, form and intention are present.

Pope Eugenius IV., when he issued the decree *Pro Armenis* at the Council of Florence in 1439, felt it necessary to decide: "*Minister hujus Sacramenti* (*Baptismatis*) *est sacerdos, cui ex officio competit baptizare. In causa autem necessitatis non solum sacerdos vel diaconus, sed etiam laicus vel mulier, immo paganus et haereticus baptizare potest, dummodo formam servet ecclesiae et facere intendat quod facit ecclesia.*"

The East is strictly, almost rigidly, conservative, and the Eastern Churches display, with reference to all their ecclesiastical customs, the greatest aversion to departing from the traditional *consuetudo.* This is particularly the case with regard to baptism and the ceremonies connected with it. They adhere most exactly to their traditional ceremonies. Their *Forma baptismi* is very simple; the Latin translation of it is: "*Baptizatur* (*baptizetur* is also valid) *servus* (a) *Dei N. in nomine Patris et Filii et Spiritus Sancti.*" The priest baptizing utters these words in either the liturgical language or in the vernacular, and this amount of

familiarity with the Euchologium (Ritual) may be assumed in the least educated priests of the Eastern Churches, who all know and use this formula. It is certain too that they use natural water as the matter of baptism and not an artificially produced fluid of any kind. As many believed the water ought to be cold, Pope Eugenius IV. stated in the decree "*Pro Armenis,*" already quoted: "*Materia hujus Sacramenti est aqua vera et naturalis; nec refert, frigida sit an calida.*" In cold countries considerations of health induced people to use warm water; in fact some maintained that it ought to be warm.

What must we say of the *Materia proxima,* or of the union of matter and form in the Eastern Churches? In this respect there can be no question that baptism, as they administer it, is valid, for they still retain the ancient *trina immersio,* or (according to Denzinger, *Ritus Orient.,* § 2) they use *immersionem aspersione mixtam* above the infant's head, so that it is impossible to doubt that a sufficient *lotio realis et symbolica* takes place in connection with the utterance of the short form of words.

It may be asked whether this *Forma baptismi* of the Eastern Church is sufficient.

At the reunion council of Florence in 1439 no objection was raised to the method of baptism used in the East from remote times, and in the decree *Pro Armenis,* Eugenius IV., after giving the Latin *forma baptismi,* goes on to say: "*Forma autem est: Ego te baptizo, etc. Non tamen negamus, quin et per illa verba: Baptizatur talis servus Christi in nomine Patris et Filii et Spiritus Sancti, vel: Baptizatur manibus meis talis in nomine Patris et Filii et Spiritus Sancti, verum perficiatur baptisma; quoniam cum principalis causa, ex qua baptismus virtutem habet, sit Sancta Trinitas, instrumentalis autem sit minister, qui tradit exterius*

sacramentum; si exprimitur actus, qui per ipsum exercetur ministrum, cum Sanctae Trinitatis invocatione, perficitur sacramentum." (Denzinger-Bannwart, 696.)

It is a matter of history that Novatian caused a schism in Rome about the middle of the Third Century; he found many followers in the East, who maintained: *Fides ministri est necessaria ad baptismi valorem.* In order to check the evil resulting from this doctrine, the Eastern Church *prudenti oeconomia* introduced a change in the form of baptism, so that *baptizatur* (βαπτίζεται) was used instead of *ego te baptizo.* This is the account given by the learned Peter Arcudius (*Concord. Eccl. occid. et orient.*, l. 1, c. 3, 8). The Latins derived their form of baptism from our Lord's word "*Baptizate*" (Matth. xxviii, 19); the Greeks from "*Baptizamini*" (Acts i, 5).

What has been said of the Churches that owe their origin to the schism of Constantinople, according to the Conc. Florentinum, applies, of course, equally to the schismatical Armenians, in case any of them wish to return to the Catholic Church; their baptism is valid.

All the Eastern Churches have a form for blessing water to be used at baptism: *Benedictionem aquae baptismalis omnes Orientales ex antiqua et universali Ecclesiae disciplina sancte retinent.* (Denzinger, *Rit. Orient.*, § 1.)

The Roman Church has always respected the old ceremonies used as sacramentals that occur in the Eastern ritual of baptism; they take the place of those of the Latin Rituale. Hence no supplementary baptismal ceremonies are performed in the case of converts from any of the Churches that we have mentioned, although it seems desirable to perform them in that of converts from Protestantism, that they may receive these sacramentals, even

if otherwise their Protestant baptism has proved to be valid, *investigatione peracta.*

The Catholic Church therefore has nothing to do with our convert Jovan in respect of his baptism, for all is in order.

Should a member of one of these schismatical bodies and a Catholic intend to enter into matrimony, there need be no doubt as to the valid baptism of the former. But in mixed marriages between Catholics and Protestants, the invalidity of the Protestant baptism frequently gives rise to a suspicion of *impedimentum disparitatis cultus.*—J. Danner, S.J.

LXXXI. IRREGULARITIES OF AN APOSTATE

George, a Catholic student, *Ritus latini,* joined the schismatical Greek Church with the intention of receiving Holy Orders in it. The schismatical pope, who admitted him to this church, regarded the Latin baptism as invalid, being *per infusionem* and not *per immersionem.* Consequently George was rebaptized according to the Greek ritual and at the same time received the Sacrament of confirmation, the *Chrismatio frontis,* which generally accompanies baptism in the Eastern Churches.

Some time afterwards George repented of his errors and sought to be reconciled with the Catholic Church. He was in retreat for several days and then, having made his *professio orthodoxae fidei,* a priest possessing the requisite faculties gave him absolution and released him *ab excommunicatione.* George now wishes to become a priest. Is this possible? He has been guilty of

1. The delictum of joining the Greek schism.
2. The delictum of absolute repetition of baptism.
3. The delictum of repetition of confirmation.

1. Joining any schismatical body involves *apostasia a fide,* at least if the *primatus jurisdictionis* of the legitimate successor of St. Peter, the chief of the apostles, be denied. Although a *schisma purum* not connected with any heresy does not involve this irregularity, it is involved by schism connected with heresy. Is the Greek schism a *schisma purum?* By no means, for it includes various heresies;—denial of the *primatus jurisdictionis Romani Pontificis totius Ecclesiae,* which was defined in opposition to the

schismatical Greeks at the second Council of Lyons in 1274, and at Florence in 1439. Moreover, since the time of Photius the Orientals have rejected the procession of the Holy Ghost *ex Patre Filioque*, which was expressly defined at the Council of Florence in the decree "*Laetentur coeli.*" The Council added: "*Definimus insuper, explicationem Filioque veritatis declarandae gratia et imminente tunc necessitate, licite ac rationabiliter symbolo fuisse appositam.*"

The same Council defined the existence of Purgatory and declared that the suffrages of holy Church benefit the poor souls detained there; the schismatic Greeks deny in theory the existence of any place of purification, although in practise they offer works of satisfaction, Masses and prayers for the dead, showing in this respect great inconsistency. We cannot therefore acquit them of heresy, and George is irregular *ex apostasiae delicto ad schisma mixtum.*

2. He is irregular also *ex abusu iterati baptismi absolute recepti.* On the occasion of the final schism, due to the action of Michael Caerularius in 1053, the Cardinal legate Humbert complained that persons who had received Catholic baptism were rebaptized by the heretics, who acted like the Arians with regard to those already baptized in the name of the Blessed Trinity. (Hergenröther, Photius III., pp. 749, 758.) The Greeks have continued this practise down to the present time, because Latin baptism is *per infusionem* and not *per immersionem.*

Therefore George consented to an *abusus iterationis baptismi, in injuriam prioris baptismi et fidei factus.* An *absoluta iteratio baptismi certo valide collati* causes a decided irregularity in the rebaptized person. Moreover, this unconditional rebaptism was administered by a *minister schismatico-haereticus* (c. 10, C. 1, qu. 7;

c. 118, D. IV. *de consecr.*). These rules are still in force according to the present discipline of the Church—and a rebaptism of this kind presupposes heresy.

N. B. The members of the Eastern Churches seem now to take a more favorable view of the validity of Latin baptism, as in 1883 a Didache (*Doctrina*) was issued containing (cap. VII.) the words: "*Baptizate in nomine Patris et Filii et Spiritus Sancti in aqua viva. Sin autem non habes aquam vivam, in alia aqua baptiza; si non potes in frigida, in calida. Sin autem neutram habes, effunde* (ἔκχεον) *in caput ter aquam in nomine Patris et Filii et Spiritus Sancti.*"

3. The schismatical pope who rebaptized George also confirmed him by anointing him with chrism on his forehead and saying: "The seal of the + gift of the Holy Ghost. Amen." Confirmation is generally administered immediately after baptism among the Greeks, and since the Fifth or Sixth Century both Sacraments have been administered by priests, who receive the necessary authorization from their Bishop, as well as the consecrated chrism (μύρον). The Greek Euchologium (Ritual) appends to the order of baptism the short formula: σφραγὶς δωρεᾶς + πνεύματος ἁγίου.

We have here therefore a second *abusus iterationis Sacramenti,* which, like baptism, impresses an indelible character upon the soul, and so cannot be repeated.

Must we regard George as irregular also *ex delicto iteratae chrismationis seu sacramenti confirmationis?* The *reatus* of a twofold sacrilege is there, but George did not become irregular in consequence of a repetition of confirmation; for irregularities are *res odiosae,* which must be treated as *strictae interpretationis.* Such an irregularity can be contracted only if the *Canones et in-*

terpretationes of the Holy See expressly say so; it is not to be inferred on analogy. In reference to *abusus Sacramenti,* c. 2, *Ex literarum,* X. V. 9, there is a definite statement: *"Per iterationem fecit injuriam baptismatis sacramento."* It is a principle that *Irregularitas non incurritur nisi in casibus in jure expressis;* therefore no irregularity can be established *nisi peculiari jure expressa,* and no canonical decision has ever declared that repetition of confirmation constituted an irregularity. *"Evadunt irregulares: iterantes serio et scienter baptismum et rebaptizati ministrantes; non autem iterantes confirmationem vel ordinem, cum hoc non sit in jure expressum; adulti, qui scienter sinunt se ab raereticis extra casum necessitatis baptizari."* Ferraris, *Biblioth, tom.* IV. s. v. *irregularitas* 2°).—J. Danner, S.J.

LXXXII. JURISDICTIO DUBIA

The chaplain of an institution told a story as follows:

One Saturday soon after Easter I was busy preparing my sermon for the following day when I was rung up on the telephone. The connection was fortunately not interrupted and the conversation began in the ordinary way: "I am H., chaplain at L., who are you?" "I belong to the St. Elizabeth Hospital at A. Will you be good enough to come and hear the confession of an Italian woman who is ill and has not made her Easter Communion? There is no priest able to speak Italian in this neighborhood. A train starts for A. at half-past nine."

I wanted to ask one or two questions but I was rung off, and, though I did my best, I could not get the connection renewed. "That's the way with telephones," I said to myself, "they have their advantages and disadvantages; now what is to be done?"

This might have been a good opportunity for my vanity to assert itself,—I was the only priest who knew Italian in all the neighborhood; the fame of my linguistic talents had spread even as far as A., etc. But happily there was no time for me to think of such things; I had to make haste. The train was to start at half-past nine, and if I intended to catch it, I ought to be off at once.

There were, moreover, other thoughts and considerations that caused me much worry, and they began to torment me even on my way to the station, which was not far from my house.

In my haste I had had no time to think over the matter; my first impression had been that the woman was dangerously ill, with only a few hours to live. That must have been why I was asked to come at once, and why the time of the train was mentioned. I had hardly realized that A. was not in our diocese, but I paid little attention to that fact, as any priest, whether belonging to the diocese or not, has full jurisdiction in the case of persons *in articulo* or *in periculo mortis.*

Now, however, the thought presented itself that she was perhaps not dangerously ill, and then what should I do? Why had the person who spoke to me by telephone added that she had not yet made her Easter Communion? If this addition meant anything at all, it seemed likely that I was being summoned in all haste, not because the patient was seriously ill, but because the time for fulfilling the Easter precept was drawing to a close.

At the station I fell in with some other priests who traveled part of the way with me. I joined in their conversation as well as I could, but they remarked more than once that something unusual must have happened, for I was so dull and distracted. I was heartily glad when they got out and left me to my own melancholy reflections.

I said to myself: What in the world am I to do if, on arriving at A., I find the patient not dangerously ill?—I will telegraph to the Bishop at N. and obtain the necessary jurisdiction. (N. B. There is no telephone between A. and N.)—But will he trust a perfect stranger? It is not altogether correct to telegraph for faculties to hear confessions. Will not the Bishop say: "What business is it of good Father H.? Can he not go to A. another day, after he has written to ask for faculties and received them in the ordinary way?"

In order to answer these quite justifiable arguments I should have had to explain all the circumstances, and I could not do that in a telegram. Even if I applied to the Bishop through the parish priest, or some other priest whom he knew, I still could not avoid the difficulties inseparable from the use of a telegram.

I might perhaps serve as interpreter between the penitent and some priest belonging to A. That, however, is an extraordinary proceeding which no one is bound to adopt. Would the sick woman agree to such a suggestion? Then I remembered having read in books on moral theology that a parish priest can give jurisdiction to another priest to hear confessions in his parish. This opinion is probable, *probabilitate juris*, and therefore is safe in practise. But at once I had to acknowledge that it was no good to me, for a parish priest can only give faculties to hear confessions to another parish priest, and I was only chaplain in an institution!

Possibly, I argued again, the woman has only committed venial sins, and, according to a probable opinion, any priest, even without faculties, can absolve from venial sins. Such an absolution is practically always valid, and, as in my case, there was a reasonable ground for giving it, it would also be permissible, although under other circumstances, according to the strict prohibition of Innocent XI. (Decree *Cum ad aures*, 12 Feb., 1679), it would not be regarded as such.

I could not console myself with this idea, however, for how was I to know beforehand whether the patient had committed only venial sins? As I could not know that, it was impossible for me to hear her confession at all and oblige her to accuse herself of sins from which I could not absolve her. Moreover, people are apt to regard many sins as mortal, which are really only venial,

and so they sin grievously subjectively, when objectively there is only a *materia levis*. What was I to do, poor chaplain that I was?

I commended the whole affair to Our Lady, and when I reached A. I walked to the hospital, prepared for anything that might happen. I was shown into the parlor and the Sister Superior came at once to see me. I introduced myself as the priest who had been summoned because I spoke Italian, and I asked her whether the patient were dangerously ill, or whether I was wanted only to give her an opportunity of fulfilling the Easter precept. The Superior said that the patient was seriously ill and had to undergo an operation on Monday, therefore she was to make her confesson to-day and receive Holy Communion the next morning, Sunday being the last day for fulfilling the Easter precept.

I was greatly relieved on hearing this answer. Why had I worried so much about nothing at all?

They brought me a stole and took me to the ward where the Italian woman lay. She was very glad to see some one at last who could talk her native language and she made the most of her opportunity. I pointed out to her that it might be harmful for her to talk much just then and that I had only come to hear her confession, etc. After giving her absolution, I left the ward to go and have a chat with old Father X., a chaplain like myself.

In the corridor, however, I met the house surgeon, and, having introduced myself, I asked him whether the Italian woman, who was to be operated upon on Monday, were dangerously ill. I added incidentally that I had not noticed any signs of serious illness or great weakness, and this fact had led me to ask a question that would otherwise have been impertinent.

"Dangerously ill?" said the doctor. "I can hardly say that she is so bad as that."

"But she is suffering from appendicitis and is to undergo an operation on Monday."

"Appendicitis? Well, the nurse thinks she has it, but in my opinion she is suffering only from the effects of a chill. If she can be made to perspire freely she will soon be all right. If she is not better to-morrow evening we shall examine her again on Monday; that is what the sister meant by talking about an operation."

"Would not an operation involve real danger?"

"Yes, of course; but will there be any operation? I do not think so. It is possible that the sister is right, but, as I have told you, I do not agree with her."

The good man little knew what perplexity his answers were causing in my mind. The sister had told me that the woman was very ill and on the point of undergoing a serious operation. Therefore I had heard her confession and given her absolution. The doctor was now telling me quite the opposite and did not think that there was much the matter with her. Could I be at ease regarding the absolution that I had given?

On comparing the two conflicting statements, I came to the conclusion that one possessed as much probability as the other.

I had not yet visited our Lord in the Blessed Sacrament, so I asked my way to the chapel, and after making an act of adoration and praying for light, I leant my head on my hand and thought over the case.

According to the writers on moral theology, I argued, *articulus mortis* and *periculum mortis* suffice to make it a duty to confess and receive the last Sacraments, and to give faculties to a priest to hear a confession. For *periculum mortis* it is enough that the danger of death is probable. What is, however, a *probabile peri-*

culum mortis? It is a circumstance or condition (*bellum, operatio chirurgica, morbus*), which in many cases, and therefore probably also in this case, results in death. Some writers (cf. Lehmkuhl, *cas. consc.*, II. n. 453, p. 263) even give a wider interpretation to this probability, but it is undoubtedly necessary for the condition—in this case the serious illness—to be recognized with more or less certainty by means of its outward manifestations. How do matters stand when it is merely probable that a *probabile periculum mortis* exists? Has any priest jurisdiction under these circumstances? This is the case under consideration.

Supposing I had administered Extreme Unction to this woman, would she certainly have received the grace of the Sacrament? No, not certainly, but only probably; and if the next evening the doctor's opinion proves to be correct, it is certain that she would *not* have received the grace of the Sacrament. Must I not argue in the same way with regard to absolution?

Supposing I were now asked to anoint her, could I do so simply and unconditionally *ceteris supponendis suppositis?* I should, of course, say that there was absolutely no danger of a *proxima mors*, and therefore the administration of the Sacrament had better be postponed until some change took place in the patient's state, or, if there were some urgent reason for administering it at once—such as my having to leave A., and the probability that no other priest could attend for some considerable time—I might anoint her conditionally. Ought I not to have also absolved her conditionally? I can only declare with probability *hic et nunc* that my penitent has received the grace of the Sacrament.

Supposing she had mortal sins on her conscience, and she died after my absolution without its being made valid, she would probably be lost. Who can know with certainty that she has not

sinned grievously subjectively, although she has really committed only trifling offences? I was bound to provide against this possibility, even *cum incommodo proportionato malo illato vel oriundo,* as is stated in the paragraph *"De supplendis defectibus in confessione commissis."* In other words, if I could do so without great difficulty, I was to some extent bound to make it certain that the penitent was in the state of grace.

I proceeded to go through the whole theory regarding *jurisdictio dubia,* as far as I could remember the teaching of theologians.

1. A *titulus coloratus* in conjunction with *error communis* makes absolution certainly valid. Have I a *titulus coloratus?* No; for in order to have it I should have to be a parish priest, or at least a priest in charge of souls in this diocese.

2. Can I have a *titulus existimatus,* or is there at least an *error communis* with regard to me? No; for this would require the majority of the inhabitants of this town to believe that I had jurisdiction to hear confessions, whereas I am a complete stranger.

3. Does not Holy Communion restore to the state of grace a recipient, who communicates *bona fide* and *cum attritione* in spite of being in a state of grievous sin? My penitent intends to communicate to-morrow, for the Superior told me that she had not yet fulfilled the Easter precept; she has *bona fides,* and probably also *attritio.*

But although with regard to Extreme Unction it is certain that the recipient, having these dispositions, is restored to the state of grace, with regard to Holy Communion it is only probable; and so again I arrived at the same result.

I considered it a duty to see that the absolution was made valid

before my departure if I could devise a means of rendering it so. I kept in view the fact that my penitent, having probably made a proper confession, was not bound to confess her sins again before next Monday, when she was to be examined again by the doctors, and the real state of her health would be ascertained. Long before then I should be back at home, and it would not be possible for me to return to A. How could I now at once make sure that she was in the state of grace without any very great difficulty?

Two plans suggested themselves to me. I might induce her to make an act of perfect contrition, and to promise God to love Him above all things, and for love of Him to abhor all sin and avoid it in the future.

Or, as there was no reason to fear a scandal, I might induce her by nodding her head, striking her breast, or giving some outward sign, to make a general confession to the old chaplain of the hospital, who was certainly able to give her absolution.

The second plan appeared to me easier and safer than the first. At the same time I could instruct my penitent and show her plainly how she ought to make her confession to the chaplain, in case she was dangerously ill and no other priest could be obtained, so that he might be able to give her valid absolution. I knew that if the penitent gives no outward sign of self-accusation, absolution is not certainly, but probably, valid.

One more difficulty presented itself. Was it my duty to tell the woman that if she were quite well on the Monday she ought to confess again the sins of which she had accused herself? I found several reasons for at once setting aside this scruple, among

others, that it would hardly be possible to make her understand me, and that I could not suggest such a thing to her *sine offensione.*

On reaching home my first business was naturally to look in my books of moral theology and find out whether I had done right.

I discovered the principles that I had applied enunciated by Noldin (*De sacramentis,* ed. 8) and Génicot (*Theol. mor. instit.,* ed. 5).

1. *Nemo tenetur confiteri per interpretem* (Noldin, n. 270).

2. *Parochus probabiliter censendus est universaliter approbatus ac proinde vocari potest a parocho alterius dioecesis ad audiendas confessiones* (Génicot, II. n. 325; Noldin, n. 341 and 346).

3. *Probabilis est sententia posse sacerdotem non approbatum a venialibus valide absolvere* (Noldin, n. 344).

4. *Si extrema unctio confertur infirmo qui putatur esse in periculo mortis, reipsa autem non est, invalidum est sacramentum.—In dubio (positivo), num infirmitas sit periculosa, dari potest extrema unctio, sed sub conditione (si capax es), ne frustretur sacramenti effectus* (Noldin, n. 458). *Atqui idem dicendum de absolutione infirmo data absque jurisdictione.*

5. *Certum est ecclesiam supplere jurisdictionem in errore communi cum titulo colorato* (Noldin, n. 355, 1).

6. *Probabile est ecclesiam supplere jurisdictionem in solo errore communi sine titulo colorato* (Noldin, n. 355, 3). *Nunc autem certum est, cum Canon* 209 *loquatur tantum de errore communi.*

7. *Qui ad sacramentum vivorum accedit, reus peccati gravis, quod bona fide existimat contritione perfecta vel sacramento poenitentiae deletum esse, valde verisimiliter veniam obtinet per con-*

tritionem quam Deus concessurus est ex congruitate (Génicot, II. n. 130, IV).

8. *Nulla apparet necessitas monendi poenitentem (qui dubie tantum absolutus est), ut postea confessario, qui certa jurisdictione instructus est, eadem peccata exponat, quia obligationi ea confitendi probabiliter jam satisfactum est* (Noldin, n. 358).

9. *Defectus circa valorem sacramenti commissus reparandus est cum incommodo proportionato malo illato poenitenti* (Noldin, n. 417; Génicot, n. 376, 1).

I subsequently told a professor of moral theology all my difficulties connected with this case and the manner in which I had tried to solve them. He thought that I had done right, and went so far as to praise my knowledge of moral theology, saying that not every one would have possessed as much. I replied that in times of urgent need our memory is roused to unusual activity, and I had studied in my youth under an excellent professor,—he is now dead,—who understood the art of bringing the principles of moral theology before us in so plain and convincing a manner that they were deeply impressed on our minds. Of course since then I have read up my moral theology more than once, and at the present time I refer chiefly to Génicot and Noldin, though I do not neglect Goepfert, Koch and others.

This was the story told by my friend the chaplain. It would be well if all priests could give evidence of possessing as much theological knowledge as he did.

The Code in Canon 874 indirectly denies the right of pastors to delegate jurisdiction for the hearing of the confessions of their parishioners. It may also be noted here that the Code drops the approbation demanded by the Council of Trent and speaks only of jurisdiction for the hearing of confessions.

LXXXIII. DISPENSATION FROM THE OBLIGATION TO COMMUNICATE FASTING

Anna is an invalid, subject to violent attacks of coughing, with a tendency to vomit; she has suffered from this ailment for a long time and finds that nothing relieves it but the use of a certain medicine. It is a great grief to her that she is thus deprived of Holy Communion, which she would wish to receive daily. She has read in some religious paper that, on December 7, 1906, the Holy Father granted to sick people certain mitigations of the rule that Holy Communion must be received fasting. Accordingly she asks her confessor whether, in virtue of this decree, she may communicate after taking her medicine, and, if not, whether it would not be possible for her to obtain permission to do so.

What answer ought to be given?

The first question must be answered in the negative, for Anna is able to go out, and the concessions were made only for sick people, who, though they may not be in danger of death, have already been laid up (*decumbunt*) for a month, or, according to the declaration of March 6, 1907, are able to get up only for a few hours daily "*in lecto decumbere non possunt aut ex eo aliquibus horis diei surgere queunt.*" These concessions, moreover, do not apply to daily Communion but to Communion twice in the month, or, in pious households where the Blessed Sacrament

is reserved or where Mass may be said in a private chapel, to Communion twice in the week, both *de confessarii consilio.*

With regard to the second question, the following course may be suggested to Anna.

1. Let her address a petition to the Holy Father that her Confessor may write out in her name. It may run as follows:

Beatissime Pater! N. N. dioecesis N. quamvis non decumbat, ipsi tamen causa male affectae valetudinis moraliter impossibile est observare jejunium naturale ante Communionem praescriptum. Ideo ad Sanctitatis Vestrae pedes provoluta suppliciter petit facultatem sumendi aliquid per modum potus, antequam quotidie vel frequenter ad S. Communionem recipiendam accedat.

Loco N. die . . . Pro oratrice N. N. confessarius N. N.

2. The petition must be sent to the *Sacra Congr. de Sacramentis* through the Bishop of the diocese and be recommended by him. For this reason the confessor should despatch it to the ordinary, and send with it a note, stating that he can vouch for the truth of the reasons that it contains for appealing to the Holy Father.

3. The *Sacra Congr.* is in the habit of dealing with such petitions by authorizing the Bishop to allow the petitioner to make a definite number of Communions in the week: "*Sacra Cong. de disciplina Sacramentorum vigore facultatum sibi a Ssmo Dño nostro Pio PP. X. tributarum, attentis expositis benigne committit Ordinario N., ut pro suo arbitrio et conscientia oratrici veniam largiatur aliquid sumendi per modum potus ante Sanctissimam Eucharisticam Communionem quater in hebdomada, durante tamen male affecta valetudine, de consilio confessarii et remoto scandalo.*"

4. The ordinary then forwards the document relating to the dispensation, that he is now authorized to give, to the petitioner through her confessor. It remains then for the latter to explain

to his penitent the concession granted her by the Holy Father, that she may understand what is permissible for her to do, as long as she continues in the same state of health. At the same time a note is added, stating what the cost of the proceedings has been.—Johann Schwienbacher, C.SS.R.

LXXXIV. CAN EVERY JEW BE BAPTIZED?

Israel applied to Titus, the Catholic priest at N., for holy baptism, and began to receive instruction. His motives were not altogether very good, but Titus hoped to improve them and took much pains. Israel had already announced his intention to abandon Judaism, and this was to his credit for the Jewish community at N. publishes the name of every apostate from its ranks in the daily papers.

When the priest applied to the Bishop for leave to baptize Israel, it was noticed from his marriage certificate that his wife had been married before, and there was no indication of her having been a widow. The Bishop asked for particulars, and Israel acknowledged that the woman to whom he was married according to the civil and Mosaic law, had divorced her first husband, who was a Jew. Israel's marriage was therefore invalid in the sight of the Church, *propter impedimentum ligaminis,* and he has been living in (hitherto material) adultery. Let us call his wife Lydia and her first husband Solomon. The marriage of these two persons was valid. But Israel's baptism would have been possible only if the marriage between Solomon and Lydia had been invalid, or if it had been *ratum* and not *consummatum,*—in which case the Pope could separate them,—or if Solomon were dead and Lydia really a widow. One more possibility existed.—Lydia might be baptized and then communicate with Solomon through the Bishop's court. If he answered both the questions asked him in the negative, and said: "I will not be

baptized, and I will not live with the Christian Lydia," then Israel could be baptized and married to the already baptized Lydia.

In the case before us Lydia refused at first to be baptized, but afterwards she consented, although she would not announce her abandonment of Judaism publicly. She was afraid that her mother would disinherit her, although she could not have been totally disinherited, but would have received the share of her mother's property to which she was legally entitled. After considering the matter, the Bishop did not allow her to be baptized without making any public announcement; for after her baptism it would have been necessary to communicate with Solomon, who would certainly have revenged himself by informing Lydia's mother that her daughter had become a Christian. Consequently Israel could not be baptized. He and Lydia already had children, and so they could not be advised to separate from bed and board, or to apply to a civil court for a separation. If he and Lydia had been willing to renounce what they hoped to inherit from her mother, his baptism would have been possible, for in that case Lydia would have published her renunciation of Judaism, and have been baptized, and, after Solomon had been communicated with, she might have been properly married to Israel, who would also have been baptized.

If anyone cares more for an inheritance than for God he is unworthy of God's grace. What advantage is it to Israel if he gains the whole world and suffers the loss of his own soul? Christianity requires us to love God more than money and worldly possessions.

It behoves us to be careful about baptizing Jews.—Karl Krasa.

LXXXV. BAPTISM OF CHILDREN, THE OFFSPRING OF CIVIL MARRIAGES

A Jew, named Israel, married Sempronia, who was the child of a mixed marriage. She had been baptized a Catholic, but practised no religion at all. They were married before the registrar. At the birth of their first child, a girl, they both wished her to receive Catholic baptism. The priest, being aware that this was not always granted in similar cases, went to see them, and tried to induce them to promise that all the children who might subsequently be born should be baptized and brought up as Catholics, for if two persons after contracting a civil marriage give this pledge, it is possible to obtain a dispensation from the law prohibiting marriage between a baptized and an unbaptized person. The Jew Israel refused to be baptized himself, and he would not consent to make any promise, saying that the eldest son at least must be a Jew, so as to be able to recite the customary prayers when he himself died and on the anniversary of his death.

If Israel had made the promise a dispensation *ab impedimento disparitatis cultus* could have been obtained, and the ecclesiastical marriage performed *sub passiva assistentia.* Sempronia might have begun to practise her religion again, and the marriage between Jew and Christian would have been valid before the law and the Church. It would have been a mixed marriage, in which all the children were to be brought up as Catholics.

Israel would agree to nothing, and Sempronia, who had prac-

tised no religion for sixteen years, accepted with complete indifference the Bishop's decision that the child could not receive Catholic baptism, and it remained unbaptized; it was most unlikely that it would have been brought up as a Catholic. Only three years before Sempronia had been attending lessons on Christian doctrine at school, but the fact that she selected a Jewess to act as godmother reveals her state of mind. It was only when the priest pointed out to her the impossibility of having a Jewish godmother that she chose a Catholic, but one who never sent her own child to Mass on Sundays.

The end of the matter was that the Catholic godmother took the child to be baptized in the Lutheran Church. Thus the father was a Jew, the mother had no religion and the child was a Protestant! Such are the results of the teaching of the present day!—Karl Krasa.

LXXXVI. PROTESTANTS AND THE COMMANDMENTS OF THE CHURCH

Justinian, a Catholic, has a Protestant servant and believes that he may provide meat for him on Friday, as, being a Protestant, he is not bound by the Catholic law of abstinence.

Justinian is, however, in the wrong.

The law of abstinence is a human law binding upon all who are the subjects of the lawgiver and have attained to the use of reason. Now all persons validly baptized belong to the Catholic Church and so are bound by her laws. There is, therefore, no doubt that Protestants are strictly called upon to observe the Catholic law of abstinence.

According to the teaching of theologians (cf. Müller, ed. 9, I. § 53, n. 5; Noldin, ed. 7, I. n. 143; Lehmkuhl, ed. 11, I. n. 228), the Church does not impose rules laid down for the personal sanctification of men upon Protestants, *ne augeantur peccata;* they regard themselves, generally, *bona fide,* as free from the commandments of the Catholic Church; they violate them, it is true, when they disregard them, but they commit no sin; their action is bad, a *peccatum materiale,* but not evil, not a *peccatum formale.*

With regard to the laws of the Church laid down for the maintenance of public order, as *e. g.,* in those relating to impediments to marriage, Protestants are obliged to conform to the decisions of the Catholic marriage law. This point should be

borne in mind when any question arises as to the validity of a Protestant marriage.

A Protestant does not sin formally by eating meat on Friday, but his action, viewed from the Catholic standpoint, is bad, and therefore no Catholic should encourage him to do so. Justinian ought not to give his Protestant servants meat on Friday, although there might be a reason for his giving meat to them rather than to Catholic servants. The same remark applies to all the laws of the Church. A good Catholic ought in such cases to display his Catholic convictions, and, by setting a good example to his non-Catholic servants, do his best to bring them to the true faith.

LXXXVII. CREMATION

I. In a town where the subject of cremation is frequently discussed even amongst Catholics, the priest regarded it as his duty to protest from the pulpit against this pagan practise. He overthrew the arguments brought forward in support of it and showed that, according to genuine Catholic opinion, the churchyard ought to continue to be the resting-place of those Christians who have died in the faith. He explained that Catholic instincts condemned cremation as an abominable abuse (*Acta s. sed.*, vol. XIX. p. 46), and added: "How utterly the Church detests the pagan practise of cremation may be seen from the fact that she excommunicates such as are members of any association that aims at promoting it."

The priest was making a mistake when he uttered the last sentence. A member of an association for promoting cremation incurs the *excommunicatio latae sententiae Romano Pontifici simpliciter reservata* only if the association is one of freemasons.

A question having been asked whether it were permissible to join any association promoting cremation, the S. Congregation of the Inquisition replied on May 19, 1886: "*Negative, et si agatur de societatibus massonicae sectae filiabus, incurri poenas contra has latas.*"

II. John, an assistant priest, was summoned to give the last Sacraments to a dying man. John was aware that the man was not a freemason, but that he had left instructions in his will for his body to be cremated.

In his confession the dying man did not refer to this matter at all; John also said nothing, but gave him absolution, the Viaticum, etc. John acted quite rightly. If the dying man had consulted him, or accused himself of what he had done, things would have been different, but, as it was, the penitent was *bona fide quoad liceitatem cremationis*, and John, being afraid that an admonition on his part would do no good, said nothing. *"Si moniti renuant,"* a priest is bound to refuse absolution. *"Ut vero fiat aut omittatur monitio, serventur regulae a probatis auctoribus traditae, habita praesertim ratione scandali vitandi"* (*Analecta eccles.*, vol. III. 99).—Prof. Gspann.

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